

OF A

# COURT MARTIAL,

HOLDEN AT QUEBEC,

FOR

THE TRIAL

OF

# Lieutenant Benoit Bender,

OF THE

11st. Regiment of Foot;

IN

JULY, 1815.



PRINTED BY J. LANE, St. FRANCOIS XAVIER STREET

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## PREFACE.

THE following proceedings are submitted to the public, for the purpose of removing the unfounded imputations to which Lieutenant Bender's character has been so long exposed. Many of his countrymen may have heard of the Charges exhibited against him, without ever having been made acquainted with the grounds of his acquittal. The history of his case will be found in the following memorial, presented by him to his Excellency Sir George Prevost, for the purpose of obtaining a trial.

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# MEMORIAL

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To His Excellency Lieutenant General Sin George Prevost, Governour in Chief, Commander of the Forces, &c. &c. &c.

The Memorial of Benoit Bender, Lieutenant in His Majesty's Forty-First Regiment of Foot.

May it Please your Excellency,

YOUR Memorialist is sorry to find himself under the necessity of troubling your Excellency with the present application: The hardship of his case will, he humbly presumes, operate as a sufficient excuse for intruding himself on your Excellency's notice. He begs leave to be permitted to lay before your Excellency a simple statement of facts which he will endeavour to make as succinct as possible.

Your Memorialist, one of His Majesty's Canadian Subjects, has had the honour of being for more than six years an officer in the said regiment. He has served as such during the campaigns in the

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Upper Country, and has shared in almost every engagement with the enemy. It is not enough for your Memorialist to state, that before the existence of the grievances herein after complained of, his character as a soldier, had ever been free even from the breath of suspicion: He flatters himself that he can shew, whenever the long wished for apportunity shall be afforded him, that he had always enjoyed the confidence and esteem of his superiours and brother officers.

Shortly after the affair at Rivière aux Raisins, in January 1813, some reports injurious to the honour of your Memorialist, were said to have proceeded from Captain Mockler, Royal Newfoundland Regi-These reports were immediately traced to their supposed source, by your Memorialist, in presence of Assistant Surgeon Falkener, of the 41st Regiment, and most clearly disavowed by their reputed author, who, not satisfied with asserting their falsehood, gave your Memorialist a positive proof of his esteem, by recommending him for the situation of Fort Adjutant of Amherstburg, then commanded by the said Captain Mockler. This situation your Memorialist continued to hold, to the satisfaction of Captain Mockler, until July following, when he was removed from thence to the Engineer Department, by order of Major General Proctor. In this latter capacity as attached to the

said department, it is fortunate for your Memorialist that his conduct came directly under the eye of the Major General, and he rests with conscious security upon the Major General's knowledge of his character. That character was, however, again assailed by the reports above alluded to; this time they reached the Major General, through other channels, and he ordered the senior officer of the 41st Regiment, to obtain in writing from the said Captain Mockler, a statement of what he, Captain Mockler, knew or heard concerning your Memorialist, but the said reports were a second time as positively disavowed by Captain Mockler, as they had been by him in the first instance, and he made your Memorialist an apology for the same, in presence of Assistant Surgeon Falkener, then of the 41st Regiment. To the Bull Charles which of

Your Memorialist now thought himself secure from any further attempt against his character; the proper authority had interfered, a shadow of complaint had not been found to exist against him, and he had reason to believe himself sheltered from any further calumny. In the mean while Captain Chambers of the 41st Regiment, your Memorialist's present accuser, came in the beginning of March 1813, to Amherstburg where your Memorialist then was, and lived upon terms of friendship with your Memorialist until the 5th of May follow-

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ing. The said Captain Chambers and your Memorialist, were together at the affair which took place on that day at the Miami River. A dispute occurred there between a relation of your idemorialist and Captain Chambers, with the particulars of which your Memorialist will not trouble your Excellency; but it is very easy for him to trace to this source the enmity of the latter.

After the engagement at Sandusky, in August 1813, at which your Memorialist was present, as was also Captain Chambers, your Memorialist again found himself quartered with Captain Chambers at Amherstburg, and continued there for the space of six weeks, doing duty and associating with Captain Chambers and his brother officers.

Your Memorialist begs leave to mention, that Captain Mockler and Lieutenant Hayles of the 41st Regiment, were there also during the said period, a good understanding appeared to exist between Captain Chambers and your Memorialist; but he has since learned from high authority, that Captain Chambers had then secretly accused him of one of the highest crimes of which an officer could be guilty, and refused at the same time, to prefer any charges against him.

Employed on a different service, your Memorialist separated from Captain Chambers in September, and did not meet with him again, until the

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11th May, 1816, at York, where, the 41st Regiment then was, under the command of Major Friend; your Memorialist and Captain Chambers dined together on that day at the Mess of the Regiment. After Memorialist had withdrawn, Captain Chambers traduced his character, by a repetition of the former accusations, and that evening Major Friend signified to Memorialist that, in consequence of the statement brought against him by Captain Chambers, he would be no longer allowed to meet his brother officers at the same table. In vain did your Memorialist expostulate; he solicited in vain an opportunity to vindicate his character; he was condemned unheard. From thet moment, he has remained an outcast from his Regiment; virtually and in effect suspended from duty, though never placed under an arrest; considered a burthen to his corps, and by those who knew not his innocence, a disgrace to his profession.

After being thus expelled the Mess upon the bare statement of Captain Chambers, your Memorialist solicited and obtained from Major Friend a copy of what had been said at the Mess against him by Captain Chambers, which he has now the honour of submitting to your Excellency.\*

<sup>\*</sup> The statement here alluded to, is as follows:

<sup>&</sup>quot;Shortly after I arrived at Amherstburg, in March, 1813, I was told that Captain Mockler, of the Royal Newfoundland Regiment, had

This statement is two fold; one part of it entirely rests upon the hearsay, not of the person who saw, but of a third person; the other is stated to be within the personal knowledge of the accuser. The first part is a mere echo of the reports which had been already disposed of, and of which your Memorialist humbly conceives himself entitled to plead an entire acquittal; the second has only afforded him uneasiness, because he has laboured under it so long. Was a server of the server of the

From the very first moment your Memorialist received a copy of this statement, he courted, but courted in vain, an investigation of his conduct, in every shape, with every intreaty, and with every submission that became an officer situated as he

(Signed)

A true copy.

P. L. CHAMBERS,

Captain, 41st Regiment.

W. SMITH.

Adjutant, 41st Regiment.

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<sup>&</sup>quot;asserted, that he found Lieutenant Bender, 41st Regiment, hid behind " a dead horse, in the action fought between our troops and the America " cans at the River Baisin, 21st January, 1813.

<sup>&</sup>quot; I called upon Captain Tallan, commanding the detachment at Am-"herstburg, and mentioned the circumstance to him; he informed me "he had also heard it and had reported it to Brigadier General Proctor.

<sup>&</sup>quot; but that no notice had been taken of it.

<sup>&</sup>quot;On the 2d August at the unsuccessful attempt to storm Sandusky, "I was sent by Lieutenant Colonel Warburton to bring up some men

<sup>&</sup>quot; (of the right wing) from the rear. On my return, I saw Lieutenant

<sup>&</sup>quot;Bender lying under a log alone! I obliged him to accompany me to

<sup>&</sup>quot;where Lieutenant Colonel Warburton was. After our return to Am-

<sup>&</sup>quot; herstburg, I officially reported the above circumstance to Major Gen-

<sup>&</sup>quot; eral Proctor."

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was. As soon as a late event \* had assembled at Montreal, all the Officers who were well acquainted with his conduct, and amongst others his accuser, he again renewed his intreaties, and regrets to say, that he renewed them without effect. Attacked as he had been, in that which is most dear to a soldier, his honour, he naturally looked for justice from his Commanding Officer, he was incessant, but always respectful in his applications. He may, perhaps, have solicited with importunity; but, he solicited with the feelings of an injured man, who only sought an opportunity of vindicating his character. At times he has had verbal assurances that an investigation must take place; at others, no answer whatever has been made, no attention paid to his communications. Your Memorialist takes the liberty of transmitting to your Excellency the letters which he thought it his duty to write, and the answers which he has been able to obtain.

He learned at length that his applications were too irksome to admit of a continuance of them, and that he was his own master to go whitherso-ever he thought proper. Your Memorialist had no other resource left him, than that of an application to higher authority; and he was informed on

<sup>\*</sup> The event here alluded to, is the assembling of a Court Marshal for the trial of Major General Proctor.

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the 6th instant, in a letter which he had the honour of receiving from Major General Baynes, that
"the evidence of Captain Mockler and Lieuten"ant Hayles of the 41st Regiment, was indispen"sably necessary for the investigation of his cen"duct, and that his trial must be unavoidably post"poned until one of those officers could be called
"on." It would appear from this letter that the alledged necessity of the evidence of those witnesses,
rests upon the statement of Captain Chambers.

Such is the situation to which your Memorialist is reduced. He has now lived in disgrace (if to live in disgrace can be called existence) ever since the month of May last, the period at which he was shut out from the fellowship of his brother officers, and at which he received a copy of what Captain Chambers said against him, a statement of the most serious and aggravating nature. From the bare inspection of the statement, your Excellency will readily perceive, that the testimony of the two officers mentioned in the letter from Major General Baynes, if of any weight at all, can only go to the reports, said in the statement to proceed, not directly from Captain Mockler, but from third persons, as having come to them from Captain Mockler.

These reports were not the subject of a new discovery, only just made by Captain Chambers

in the month of May last; they were of an older date; they had expired, and had been revived ! they had been officially determined by proper authority since January, 1813. Captain Chambers was no stranger to them ;-He knew of them at Amherstburg, when with your Memorialist in August following. With respect also to the second part, the action of Sandusky, therein alluded to, had then taken place but a short time before; every circumstance must have yet been fresh in the recollection of those concerned: All the officers and men who had survived, were then at Amherstburg. Captain Mockler and Lieutenant Hayles, were then there also: Captain Chambers was called upon at the time by Lieutenant Colonel Evans, as your Memorialist has been since informed, to prefer charges against him, and he refused so to do. If it were not inconsistent with the respectful language of a Memorialist, your Memorialist would presume to ask, why did Captain Chambers hesitate in bringing to condign punishment, a person guilty of a crime so disgraceful, when the very witnesses were on the spot, whose testimony he now states to be indispensably necessary! Should the honour of the service, the feelings of an officer and the official solicitude of his superiours, have made it an imperative duty for him to have done so? Your Memorialist would then have had a fair op-

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portunity of establishing his innocence. He has a fair opportunity of doing so now, should your Excellency be pleased to order his trial to take place. But the same reasons, no doubt, still exist for inducing Captain Chambers to defer an investigation; All the witnesses necessary for the defence of your Memorialist happen at present to be collected at Montreal; it is an opportunity which may never occur again; their respective duties will at the opening of the campaign, place them far asunder, and by the chances of war, he may be deprived of their evidence forever, or remain exposed, it is impossible to say how long, to the ignominy of an endless accusation. If his character were still to continue loaded with obloquy, as long as it has hitherto, he may be called upon by his accuser, at a moment, when he has not a witness left. In an early stage of this accusation, when the above mentioned Assistant Surgeon Falkener was about to proceed to England, your Memorialist notified to Major Friend, that he was a necessary witness; but, Assistant Surgeon Falkener was allowed to depart and your Memorialist will never now be able to avail himself of his testimony.

Your Memorialist only begs to add, that he takes the liberty of referring you to the statement of Major General Proctor herewith produced as the best evidence of the futility of the statement in question; with tair the ate with state Mo era con Christoff

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with respect to the first part of it upon which Captain Chambers would contend that the absence of the two witnesses ought to be a bar to an immediate trial, Major General Proctor's communication with Captain Mockler, was official and direct, that statement was declared unfounded by Captain Mockler, and in that respect alone, the Major General's statement, would, your Memorialist humbly conceives, be sufficient to outweigh that of Captain Chambers, inasmuch as by his own assertion, his information was not derived from Captain Mockler, but from third persons.

Your Memorialist would be apprehensive of having trespassed on the attention of your Excellency, if his object were not to attain from your Excellency that justice which he can expect from you alone; he has therefore thought it necessary to put your Excellency in possession of the whole of his case, fully confident that the justice of your Excellency will render all further reference of it unnecessary, and that your Excellency will be pleased to order that the trial of your Memorialist do take place forthwith.

And your Memorialist, as in duty bound, will ever pray, &c. &c. &c.

B. BENDER,

Lieutenant 41st Regiment.

Montreal, 22d January, 1815.

In consequence of the above Memorial his Excellency was pleased to order that Captain Mockler, then at Michilimakinack, and Lieutenant Hayles, then at New Brunswick, should repair to Quebec for the trial of Lieutenant Bender. They both arrived in June following. A petition was then presented to His Excellency Sir G. Drummond the administrator in chief—and thereupon a Court Martial was ordered to be convened at Quebec on the 17th July following.

### MEMBERS OF THE COURT MARTIAL.

Assembled and Sworn 17th July, 1815.

#### PRESIDENT.

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MAJOR GENERAL GLASGOW, Royal Artillery.

LIEUT. COLONEL M'PHERSON, 16th Veteran Battalion.

LIEUT. COLONEL MOODY, 104th Regiment.

LIEUT. COLONEL SMELT, 103d Regiment.

MAJOR CADDY, Royal Artillery.

MAJOR COURTNEY, Nova Scotia Regiment.

MAJOR BROWN.

HONOURABLE CAPTAIN GARDNER, \ 103d Regiment.

CAPTAIN DIXON, Royal Engineer.

CAPTAIN PROCTOR, 104th Regiment.

CAPTAIN COLCLOUGH.

CAPTAIN BOWIE,

103d Regiment.

CAPTAIN GRIFFITH,

CAPTAIN HOLLAND, 104th Regiment.

### CHARGES

#### PREFERRED AGAINST

# Lieutenant Benoit Bender,

41st Regiment.

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I. "For misbehaving before the enemy in ac"tion on or about the 22d January, 1813, at or
"near the River Raisin in the Michigan Territory
"in the United States of America, by concealing
himself while the detachment of His Majesty's
"Troops with which he was serving, was engaged
with the enemy.

II. "For misbehaving before the enemy in ac"tion on or about the 2d August, 1813, at or near
"Fort Sandusky, in the United States of America,
"by concealing himself in the rear, while the de"tachment of His Majesty's Troops with which
"he was serving, had advanced and was engaged
"with the enemy."

(Signed)

A. WM. COCHRANE,

Acting Deputy Judge Advocate.

## COURT-MARTIAL, &c.

TESTIMONY PRODUCED ON THE PART OF THE PRO-

Captain Mockler of the Newfoundland Regiment,

IN the action of River Raisin, on the 22d of January. 1813. I commanded a detachment of the Newfoundland Regiment, who were acting with the 41st. During the action I had occasion to go where the 41st were formed. I saw Mr. Bender lying behind a field magazine, which was upon a sled, about seventy or eighty yards from the piqueting, where the Americans were, and from which they were firing. I thought, from seeing him in that situation, that he might have been killed or wounded, as his face was near the ground. I called to him, by his name and asked him if he was wounded-He answered not, that he had not been there long. He added that his horse was wounded and that there was no ammunition. I told him to get up immediately and go to his men,

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or to get ammunition for the guns—I do not recollect which. I saw no more of him until I saw him at the left of the village.

Q. At the time you saw Mr. Bender lying behind the sled was he in the rear of his men and how far was he from them?

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A. The men had just retreated before I saw him. Before they retired they had been immediately on his right and had fallen back to the ravine, which was the reason for going there. At this time the detachment I commanded had driven the Americans and was up under a barn. While the Americans were firing, Mr. Bender was thirty or forty yards from the men who had fallen back. The men were immediately ordered to go to the left, along the ravine, to the right of the village.

Q. Did Lieutenant Bender give you any reason for being in the situation you have described?

A. No—I asked him the reason. He only said he had not been there long, as I have before stated.

#### Cross Examined.

Q. How long had the troops been in action at the time you saw Lieutenant Bender behind the sled of ammunition?

A. About two hours, to the best of my recollection: The action began at day-light. Q. Did you see any person with Lieutenant

A. Not that I recollect.

Q. If any person had been there at the time, should you have seen him?

A. I think it likely I should—I did not stop long. If any person was there, he must have been very close behind the sled. I saw several wounded lying in the field, but not near him.

Q. Did it appear to you that the sled was of such a description, as to afford any protection from the fire of the enemy?

A. Yes—I think it would, from the position it was in, for the horse's head was towards the enemy and the field magazine was on the sled.

Q. What was the height of the sled and magazine?

A. The sled was a common one, of the height of the common Canadian sleds which are used in winter. The magazine, in the manner in which it was placed on the sled, was about three feet high, from the ground.

Q. Was there not a ravine in the rear of the sled; and at what distance from it?

A. Yes, about thirty or forty yards. This was the ravine into which the men had fallen back.

Q. Were there any men under cover of the ra-

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A. The men had fallen back to the ravine when I went there. There were very few men in the ravine.

Q. Had not orders been given to the troops, (shortly before you saw Lieutenant Bender,) to retreat to the ravine, and put themselves under cover.

A. I heard no such orders and have no knowledge of such having been given.

Q. Do you know what position Lieutenant Bender occupied during the action, and if you do, at what distance from that position was it, that you saw the sled?

A. I do not know what position Lieutenant Bender occupied, as I was looking to my own men, who were on the left.

Q. Did you, on your return to the line, or at any other time, and when, report to General Proctor, the situation in which you saw Lieutenant Bender?

A. Never.

Q. How long afterwards was it that you saw Lieutenant Bender on the left of the line?

A. I suppose about half an hour.

Q. Had he any ammunition with him when you saw him the second time and did you see him deliver any to the troops?

A. I did not see any with him.

Q. Were not the whole of the officers and men

on the left, concealed behind barns and houses, after the movement from the right?

A. Yes, I believe it was for that purpose they went there.

Q. Did you ever mention to any other efficers, and to whom, the circumstance of seeing Lieutenant Bender behind the sled, and what were the terms you made use of r

A. I mentioned it to Doctor Faulkener, Lieutenant Hales and Captain Houghton, at Amherstburg. I believe I mentioned it before all the officers who were at Amherstburg, who had asked me about it, whether it was true.

Q. On what occasion was it, that you mentioned it to the above officers?

A. I mentioned it in my own room, two or three evenings after the engagement.

Q. What gave rise to your mentioning it?

A. They were talking about the detachment of the 41st and Newfoundland.

Q. Did you say at the time, that you saw Lieutenant Bender lying behind a dead, or a wounded horse?

A. I do not recollect whether I said a dead, or a wounded horse. I think I said, a wounded horse. The officers said after, it was a dead horse. I told them they were mistaken, that it was a wounded horse.

Q. What officer did you hear say, it was a dead horse?

A. It was said by several of them and I think by Mr. Hales and Captain Tallon. It was generally spoken of as a dead horse.

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Q. Was it not in consequence of a degree of rivalship between the two corps, that you mentioned the circumstance alluded to?

A. It was in consequence of the officers raying that our men behaved much better than theirs.

Q. Did you perceive any alteration in the conduct of the other officers to Lieutenant Bender from what you had mentioned to them?

A. Not that I heard of, but it was spoken of as a shameful thing.

Q. Did you not, yourself, treat him with the same friendship as before?

A. I spoke to him as I would to any other officer, not having any particular friendship for him.

Q. Did not the command of the garrison devolve upon you shortly after, and did you not appoint Lieutenant Bender Fort Adjutant, in preference to several others?

A. I did not appoint him myself; but by the orders of Colonel St. George—I spoke to Colonel St. George, who was wounded—He told me some person must be appointed, and mentioned Lieutenant Bender. The temporary command had devolved

upon me, while Colonel St. George was wounded. Captain Tallon was there also and was wounded. I always called upon them and took directions from them.

### Examined by the Court.

Q. At the time you saw Lieutenant Bender on the ground behind the ammunition magazine, what impression had you as to his situation?

A. I thought it an extremely awkward situation,

to see him in at the time.

Q. What did Lieutenant Bender do in consequence of your telling him to get from behind the magazine?

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A. He got up and went a direct line to the ravine; I went across to the right of the 41st.

Q. Was there any officer of the 41st near you during the time you saw Lieutenant Bender in that situation, to whom you communicated it?

A. Not at the time. And the time.

Q. Did you make any objections to Lieutenant Bender's being appointed Fort Adjutant, at the time he was proposed?

A. No—I believe there was no one else to act, at the time.

Q. Was not Lieutenant Hales, of the 41st, and Lieutenant Garden, of your own corps, at Amherstburg?

A. I do not recolleci.

## Captain Tallon of the 41st Regiment,

#### SWORN COST BUT

Q. Were you in the action on the 22d January, at the River Raisin?

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Q. Did you see the prisoner in the action, and in what situation?

A. I did not see him in the action, but I saw him during the action.

Q. Were you wounded in the action, and did you in consequence go to the rear?

A. I was, and did go to the rear.

Q. Did you see Lieutenant Bender on your going to the rear?

A. Immediately on my leaving the surgeon, I saw Lieutenant Bender amidst the wounded men.

Q. What time was this?

A. In the morning the action commenced at Reveillé; and it might be about an hour and a half from the time the action began first—It was after the troops were ordered to charge.

Q. Did the enemy capitulate: if so, was it before, or after the surrender, that you saw Lieutenant Bender among the wounded?

A. The action was going on very brisk at the time I saw him.

Q. What passed between you and Lieutenant Bender at the time you saw him?

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A. I asked him, immediately, whether he was wounded, as I supposed nothing else would have brought him there. He replied, he was not wounded. I asked him what business he had then. He said, Colonel Proctor had sent him to bring up some men. I told him, that if he looked round, he would not see any one there who was not bleeding or disabled. He immediately went away.

Q. How far was it from the troops engaged, that you saw Lieutenant Bender?

A. I cannot tell the distance, it was out of range of the fire, where the Doctor was dressing the men.

Q. Was there a ravine near the place where the troops were engaged, and if so, had they retreated to it, at the time you saw Lieutenant Bender?

A. They had retreated into the ravine previous to the time I saw Lieutenant Bender.

Q. Did you see any stragglers near the place where the wounded were?

A. No—I did not see a man—there were a great many wounded—nearly one half we brought into the field.

Q. Had the troops retreated to the ravine previous to your leaving them in consequence of your wound?

A. They had.

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A. In the rear, a great way and out of the field:

# Cross Examined.

Q. How long after the commencement of the action was it that you left the field?

A. I cannot state the time—but it was some time after the men had retreated to the ravine?

Q. How long after the commencement of the action was it, that the men retreated to the ravine?

A. From the time the first gun was fired, it might have been about an hour, or an hour and a half was how only out to do become and or half and

Q. At the time Lieutenant Bender mentioned to you that he had orders to collect the men in the rear, did he not tell you that he had also orders to procure ammunition?

A. He did not. Jam bobinsow, edit one live and

Q. When you saw Lieutenant Bender in the rear, were you not in a cariole, or getting into one, for the purpose of retiring to your quarters?

A. There was a cariole, I believe belonging to Doctor Faulkener, and I was going over to sit down in it.

Q. Did you see Lieutenant Bender when he first

went to the rear, and how long did you remain there after he arrived there?

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A. I did not see Lieutenant Bender until he was among the wounded men, and I remained some time there, after, sitting in a cariole—It was less than one half hour.

### Examined by the Court.

Q. Had the prisoner been in the action on the 22d of January, must you not have seen him?

A. I am sure he was in the action, on the left of the wing I commanded. He commanded one of the divisions.

Q. Where was the division that Lieutenant Benden had the command of, at the time you saw him among the wounded?

A. Those who were not wounded were in the ravine when I left the field.

Q. Were there any ammunition waggons as far back as where the wounded men were?

A. I think not.

Q. Are you aware that Lieutenant Bender had any other duty on that day, except the command of the division?

A. I know nothing about it. When he came to the rear he told me it was to collect men; and two days after, he told me he was sent for ammunition. Q. Did you notice that Licutenant Bender was absent from his division, at any time before he went to the rear and if so, did you observe any thing remiss in his conduct?

A. I did not see him at all in the action.

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# Captain Chambers, of the 41st Regiment,

SWORN.

On the 2d day of August, 1813, I accompanied the right wing that attacked Fort Sandusky, under the command of Lieutenant Colonel Warburton. We advanced to within about thirty paces of the Fort, to a small ravine. Colonel Warburton directed the men to halt until the rear should come up. We waited some time in the ravine, expecting the men to come up; but as they did not come, I proposed to Colonel Warburton to go back and look for them. I went to the rear, about three hundred yards and on my return, I saw Lieutenant Bender lying hid under a log of wood. Iwas disabled in both legs\*—I told him, seeing him in that situation, that if I had a leg able to kick him, I would do it. I upbraided him with his cowardice. I told him that he must go with me, to Colonel

<sup>\*</sup> The witness added, " for I had a thorn in my left foot and had been wounded in my right thigh."

Warburton. I brought him to Colonel Warburton, and when we came up, I told Colonel Warburton what I had seem you have a least and or stone

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Q. Did Lieutenant Bender belong to the wing which you accompanied?

A. He commanded a division of it.

Q. Were there any men near him, at the time you saw him behind the log?

A. None. in the land of the same of the same

Q. Did he account, in any manner, for his being found in the situation you have described?

A. No, he said nothing.

Q. How far was he from the ravine, when you saw him?

A. Upwards of two hundred yards, not directly to the rear, but inclining to the rear—to the left.

Q. What was the strength of the wing under Colonel Warburton?

A. Perhaps one hundred and fifty, or one hundred and sixty men.

Q. Do you know whether the men of the division which Lieutenant Bender commanded, came up to the ravine?

A. I believe not, I did not know the men of the division. The division I went with, came up.

Q. Had the attack commenced, when you saw trutenant Bender in the situation you have mentioned?

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saw nenA. We had advanced to the ravine under a very heavy fire of small arms. We lost several men in the advance and several in the ravine.

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Q. When you proposed going to the rear, to collect the men, were not Colonel Warburton and the other officers, concealed in places of safety, behind the bank?

A. We had advanced to within thirty paces of the work, when Colonel Warburton had ordered the men to halt and cover themselves until the rear should come up and join us, to attack the work.

Q. Did Colonel Warburton and the officers and men then present, cover themselves accordingly?

A. They layed down—there was no cover, but by lying down under the slope of the bank.

Q. Was not the bank sufficiently elevated to protect, from the fire of the enemy, those who were lying down?

A. There were two men killed, at the time they were lying down?

Q. Were they killed lying down, or looking over the bank?

A. They were killed when lying down.

Q. When you proposed to Colonel Warburton

to go back, was there any person present, who heard you propose, and who?

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A. Captain Dixon was at hand—I do not know whether he heard me—I spoke in my usual tone of voice. Captain Bullock and all the other men who were in the rayine, were there.

Q. How many subdivisions were there under Colonel Warburton?

A.A. I think four, at by least in section 7.

Q. Do you know who were the plateon officers, with the right wing?

A. Captain, then Lieutenant Bullock, Lieutenant Bender, Ensign Proctor and I believe Lieutenant Gardner—I think he was one of them.

Q. How many subdivisions reached the right of the Fort with Colonel Warburton?

A. I believe the whole of the first subdivision came up, and perhaps the whole of the others, but I cannot tell exactly.

Q. Did not the whole of the right wing march from the left of the Fort, and did you not accompany it, on the right, through the woods?

A. I suppose the whole of the right wing did march from the left of the Fort—I cannot say certainly whether it did or not—I was in my proper place, at the head of the right wing, as acting Deputy Assistant Quarter Master General.

Q. When you had proceeded about half way to

the right, did not the second subdivision scatter in the bush?

A. I do not know.

Q. When you came back, were not all the officers and men lying down?

A. They were lying down in the same situation in which I left them.

Q. When you first saw Lieutenant Bender, did you say any thing to him before making use of the expressions alluded to, or did you immediately accost him, by saying, if you had a leg to kick him with, you would do it?

A. I asked him what he was doing there, and told him to get up.

Q. Why was it more criminal in your eye for Lieutenant Bender to be behind a log, than it was for the other officers to be concealed behind the bank?

A. Lieutenant Bender was not within two hundred yards of the division—We were within thirty yards of the Fort and were ordered to cover ourselves, by Colonel Warburton.

Q. When you saw Lieutenant Bender, did you not shelter yourself with him behind the log?\*

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This question may appear, at first view, to amount in some measure to an admission of the fact, as stated by Captain Chambers. But, the reader will be good enough to observe, that in cross-examining a witness, it is sometimes expedient to assume as true, that which he has

A. I had no occasion to shelter myself there, for it was out of all danger.

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Q. When you went back to collect the men, did you go in front of the ravine, or in its rear, or through the ravine itself?

A. I have already said that I went to the rear, part of the way through the ravine—It was out of the question going in front of the ravine.

Q. How far through the ravine did you go?

A. But a short distance—how much, I cannot say—the principal part of the ravine runs off from the garrison, and I was under the guns of it. I went some distance through that part which turned off by the left.

Q. Did you go fifty yards through the ravine?

A. A short distance—I cannot state how far.

stated in his examination in chief, in order to exhibit him in contradiction with himself. Thus, Captain Chambers says in his answer, that he had no occasion to shelter himself there, " for it was out of all danger." But, if according to his own statement, there was no danger to be apprehended there, what motive could have induced Lieutenant Bender to place himself in such a situation? The act imputed to him by this witness, could only have been produced by a fear of danger, and how could there have been a fear of danger in a place out of all danger? So much for the consistency of the witness. The fallacy of the accusation must be apparent from the evidence of Serjeant Dukes, Serjeant Stagnell, colour Serjeant White, Ensign Proctor and Lieutenant Fitzgerald. produced by Lieutenant Bender on his defence. The fact is, that when the order mentioned in the preceding answer was given, Lieutenant Bender was in the place pointed out by Serjeant Dukes, whose testimony is corroborated by the other witnesses above mentioned, and there it was that he must have been seen, for the first time, by Captain Chambers.

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Q. Describe, as correctly as you can, the situation of the place where you found Lieutenant Bender, whether it was in the ravine, or in the rear of it—If so, how far in the rear of it?

A. I have already said, that I found Lieutenant Bender about two hundred yards in the rear, to the left, hid under a log.

Q. Did you and Lieutenant Bender remain with Colonel Warburton after you had made your report to the latter, and how long?

A. I remained with Colonel Warburton until nearly dark, to afford us an opportunity of getting away. Lieutenant Bender went away before I did—I do not recollect how long we were both there together.

Q. Did not Lieutenant Bender, sometime after you arrived, volunteer his services to collect the stragglers in the rear, and did he not thereby expose himself to the fire of the enemy? Relate what you know of that circumstance?

A. I know nothing about his volunteering—I have already stated that he went to the rear.

Q. Was he, in going away, exposed to the fire of the enemy?

A. Yes, he was, but took great care to screen himself, by jumping from log to log with a great deal of dexterity and agility, and creeping on his belly. Q. Did you not hear Lieutenant Bender say, that Colonel Proctor wished to see you and Colonel Warburton?

A. Lieutenant Bender never spoke to me afterwards. I never heard him say so. hu

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Q. Did Lieutenant M'Lean, Aid-de-Camp to General Proctor, come to the place where you were, after the departure of Lieutenant Bender?

A. He did not: I think I heard his voice through the bush, calling to me to bring the men off, by order of Colonel Proctor.

Q. What was your answer?

A. I believe my answer was, that he might come and bring them away himself, for it was quite impossible to bring the men through the ravine, and that it was ridiculous to attempt it.

Q. Who was present with Colonel Warburton when you told him you sound Lieutenant Bender concealed under a log?

A. The party that came up to the ravine were all lying about us; Captain Dixon and the same persons that I left there.

Q. Must not the persons present at the time, have heard you report the conduct of Lieutenant Bender?

A. I do not know whether they did, I spoke in my usual tone of voice.

# Examined by the Court.

Q. You said that Lieutenant Bender was two hundred yards in the rear of the ravine—Did you observe any other officers under cover between the ravine and the log?

A. No.

Q. When you brought up Lieutenant Bender from the log, did Colonel Warburton make any observations on your report?

A. He said that Bender was a damn'd something or other.

#### DEFENCE.

Mr. President, and

Gentlemen of this Honourable Court:

NO situation can certainly be more painful to the feelings of a soldier, than that in which I now stand before you. No case more entitled than mine, to the application of that humane principle of English justice too well known to require a repetition.—Called upon to vindicate my character as an officer and a man, I must confess, that even a sense of conscious innocence is hardly sufficient to support

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me against the nature of the accusation. If such is the state of my own feelings, what must not be the impression upon the minds of those, who are yet unacquainted with the grounds of my defence? But I feel that in addressing you, I have no prejudices to combat, and in this consoling reflection, do I find a great source of relief. Your opinion will not be formed until you hear my side of the question. You will, I am confident, lend an impartial and an indulgent ear to every thing which I shall have to urge in my justification. I do not, however, intend to trespass on your attention more than My anxiety to bring under your is necessary. view every material circumstance, shall not lead me too far. A succinct statement of facts, will, with the help of a few observations, put you sufficiently in possession of my case; and when I shall have established, by proof, that which I am about to lay before you, I shall feel perfectly secure in trusting my long injured honour-to your hands.

In speaking of such charges as these exhibited against me, which go to strip me of every claim to the character of a soldier, and which puts at issue every thing that is sacred to an officer; I feel it incumbent on me, to give an account of the whole of my conduct, and to state facts, which, on any other occasion, I should not be justified in mentioning. The engagement at River Raisin commenced

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early in the morning of the 22d of January, 1813. Two divisions, composed of about ninety men, were sent to the right; the one commanded by Captain Tallon, the other by myself. The remainder of the troops were stationed on the left; the whole under the command of Major General, then Colonel Proctor. The enemy were sheltered behind a paling of about four or five feet high; they advanced within a short distance of the paling, and finding it impossible to bring up the men to the charge, a brisk fire commenced on both sides; it was wholly unavailing on our part. Within about an hour after the beginning of the action, Captain Tallon, commanding the right, was wounded and retired to the rear. His recollection as to the time of receiving his wound does not happen to agree with mine, nor with that of others engaged on the same ground. After Captain Tallon had left the field, I found myself the only platoon officer on the right. I felt that a double duty had then devolved upon me: I shall leave it to others to state particularly the manner in which I discharged it. Let it suffice for me to say, that I redoubled my efforts to . to encourage the men, as well by exhortation as by example.

About two hours and a half, or three hours, after the commencement of the attack, the force on the right having been reduced to about thirty men

out of ninety, every attempt having become unavailing in consequence of the situation of the enemy, and a destructive fire being still kept up from behind the paling, we received orders to retreat to a ravine which was about three hundred yards on our right; this ravine ran towards the left, nearly parallel with the paling, and the ravine was like the ground in the rear, a level open plain. We left about twenty men dead on the field, besides some wounded. So far my conduct not only is beyond the very breath of calumny, but has deserved and received the approbation of all those who had an opportunity of witnessing it. Had the base disposition, imputed to me in the charges, ever existed, it must have shewn itself on that trying occasion, when the fire of the enemy was so destructive, when the men were falling in every direction around me. The same man is not one day brave and another day a coward; at one moment firm enough to stare, undisturbed, every danger in the face; at another base enough to cast away his honour, and shelter himself in disgrace. Two such extremes are never blended together in one composition, and can never be smoothened into one character. Had such a base disposition existed in me, it must not have escaped the eye of my covering Serjeant, who, during the whole of the action on the right, stood immediately behind

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me; it could not have escaped the attention of the men who were fighting by my side, the attention of the wounded, who were lying on the ground immediately in my rear; least of all could it have escaped the attention of the Colonel, commanding, who never left the field, who came frequently to the right and spoke himself to the men under my command. They will appear before you: To their testimony do I trust for a correct account of my conduct, while the troops were engaged with the enemy on the right. Nor will the latter part of my conduct on that day, now so disfigured by the testimony before you, be found, when explained, less satisfactory than the former.

I have presumed to trouble the court with the above observations, because, from the evidence on the part of the prosecution, they must have conceived that I had no share whatsoever in the action.

Scarcely had we reached the ravine, when orders were given for the remains of the right wing, to take ground to the left. The troops in that quarter had already relinquished the attack, and sheltered themselves behind a barn and some outhouses, at the distance of about two hundred yards from that part of the ravine, to which we had retired. The object appears to have been, that we should move to the left, protected under cover of

the ravine, in order to renew the attack; we were ordered accordingly to take ground in that direction. While moving thus to the left, Lieutenant M'Lean, acting Aid-de-Camp to Colonel Proctor, directed me to go to the rear where the wounded were, to collect as many as I could, and bring up, at the same time, some ammunition. Our reduced numbers required increase, and from the continued firing, the men had nearly emptied their pouches. I obeyed immediately, and notwithstanding Captain Tallon's humane observation, with respect to the " bleeding and the disabled," I collected some men-I cannot now say how many-I believe seven or eight, and sent them on to the left. I found also in the rear, a sled with a horse and an ammunition waggon, in charge of private John Nettles, then soldier in the 41st Regiment, now one of the settlers at William-Henry. It became a hazardous undertaking for me to bring up this sled. The field in the rear of the ravine was intersected with fences, that admitted of no passage for the sled-it was necesary to make one through each fence.-Nothing was easier for me, than to have gone up myself, with the men I had collected in the rear; but my orders were to bring up ammunition, and I knew myself that the men were in want of it. I therefore from a sense of duty, proceeded with the above mentioned Nettles, to bring up the sled.

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From the many obstacles we had to encounter, it was with the utmost difficulty that we succeeded in coming up to the left. We never passed within more than fifty yards of the rear of the ravine; in approaching towards the left, we met Captain Mockler, much in the rear of the ravine—he passed us at the distance of at least twenty yards.—Such is the account of my journey to the rear.

Fortunately for me, I have it in my power, to shew that the testimony of Captain Mockler is altogether unfounded. I will not, however, pretend to say, that Captain Mockler has stated intentionally a fact which is not true. I will not say, that he has stated, intentionally, circumstances which were never connected with the fact as described by me, but I must say, in my own defence, that the impression which Captain Mockler entertained of that fact, shortly after its occurrence, was very different from the impression which he entertains now. It happened so long ago as January, 1813. I should be sorry to hint that he has borrowed the eye of Captain Chambers to assist him in taking a retrospect, but some unfriendly mist, must surely have interposed, which spreads in larger dimensions, to his view, all the disadvantageous part of an object so remote, while it obscures altogether those of a more favourable complexion.

As soon as it had reached my ears at Amherst-

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burg, that Captain Mockler allowed himself certain liberties with my character, I called upon him, accompanied by Doctor Faulkener of the 41st Regiment. The impression upon Captain Mockler's mind, was very different then, from what it is now; at least he stated it so to be. He explained away the report that was in circulation. He said, that what he had mentioned, was in a moment of levity, adding, as stated in his testimony, that the and od in a spirit of rivalship bewhole had o tween the two corps-meaning the Newfoundland and the 41st. Here have to express my sincere regret, that I have it not in my power to produce Doctor Faulkener before you. Captain Chambers having afterwards revived the above report, I made application to Major Friend, then my commanding officer, for the detention of Doctor Faulkener, who was immediately about to leave the Province; but my application was disregarded. Faulkener, however, previous to his departure, mentioned the whole of what had taken place, to Surgeon Moore, of the 41st Regiment, a witness summoned to attend this court in my behalf, and to whom I appeal for the correctness of my assertion.

Being thus deprived of the benefit of Doctor Faulkener's testimony, so conclusive upon the first charge, as to have destroyed it altogether, what cer-

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was I to have done? To have remained exposed to the shame of an interminable accusation, until the attendance of Doctor Faulkener could have been obtained, or to have come before a court of honour and of equity, not without a hope that superiour to legal quibble, it would take notice of what I now assert, and hear Surgeon Moore on the subject?

On or about the 27th of January, 1813, Captain Mockler, then commanding at Amherstburg, (for that is the fact,) appointed me his Fort Adjutant; in which situation I continued under him, for near a month. This appointment did not take place from the absence of any other officer, upon whom the situation could have been bestowed, for Lieutenants Hales and Gardner, of the Newfoundland, were then at Amherstburg. It is but little to the purpose, whether that situation was conferred upon me by himself, or whether he assented to the nomination. It is sufficient evidence for me, that Captain Mockler was of a very different opinion then, from what he is now; for it cannot be supposed, that as an officer and a gentleman, he would have allowed me to retain any situation of trust under him, if I had been capable of placing myself in an awkward situation in the field of battle; this observation carries with it the more weight, that the affair at the River Raisin had but just then taken place, and that his recollection must have been perfectly fresh at the time.

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But we have only to hear Captain Mockler himself, to be convinced that it is impossible that I could have been found in such a situation. He says, that the right wing had retreated into the ravine and were ordered to go to the left, along the ravine; that his detachment, on the left, had driven the Americans and was up under a barn. What must have been my object in getting behind a sled? No doubt my object must have been to seek a place of safety; but if the troops were in the ravine, I certainly must have found shelter there. On reaching the left, I must have found a shelter behind the barn, with Captain Mockler's own men; a shelter in both instances rendered necessary, from circumstances pointed out by the commanding officer, and resorted to by all the troops: A shelter consequently without disgrace, more secure by far than the protection that could be afforded by a sled, such as described—thirty or forty yards in front of the ravine, and of course so much nearer to the fire of the enemy. A horse and sled, thirty or forty yards in front of the ravine, in a level open plain, exposed to view on all sides, and not seen either by any one on the left, or by any of the wounded in the field! The thing is utterly impossible.

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I shall prove by the most satisfactory evidence. that had any such objects been in the front of the ravine, they must inevitably have been seen. No such objects were ever seen there; the conclusion, therefore is, that no such objects ever were there. Captain Mockler did indeed see me, as I have mentioned, in the rear of the ravine-it might have been about thirty or forty yards: But if Captain Mockler's attention was so much attracted by other objects, or so confused by haste, that he mistook thirty yards in the rear, for thirty yards in the front of the ravine, he might as well have mistaken a knap-sack for a magazine; a man standing up, for a man " lying with his face towards the ground;" a horse trotting, for a horse standing quite still; the words, " I have plenty of ammunition; for the words, I have no ammunition at all. Captain Mockler's mistake may be easily accounted for. The fact is, that he was running to the rear to collect his men, and who can ever expect correct information from a running witness?

If Captain Mockler's recollection had not been impaired from time, if he had had an opportunity of witnessing my conduct during the action, if he had heard the orders which I had received when in the ravine, if he had known with what zeal these orders had been executed, he never would have allowed himself (in a moment of levity, or from the

rivalship of corps,) to trifle with the character of an officer, and I am confident that we should have never heard of this first charge.

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I come now to the second charge, and will beg leave to make an observation equally applicable to the first as to the second. The crime laid in each, is, " misbehaviour in the presence of the enemy." The specification as to both charges is, " concealing myself while the detachments with which I was serving, were engaged with the enemy." Now, assuming for a moment, the evidence adduced in support of each, to be true, neither can be supported; for the concealment attempted to be proved under the first, must have taken place, when the troops on the right had been ordered to retreat, and cover themselves in the ravine; and when the troops on the left, had gone behind the barn and houses.—From that moment, they ceased to be engaged with the enemy; therefore no concealment took place, while the troops were engaged, and therefore the charge is without foundation. The vame reasoning will hold, as to the second charge, for after the order had been given by Colonel Warburton, for every man to secure himself, an order extending as well to those who had come up, as to those who had not yet reached him. did not fire one single shot at the enemy, but remained inactive under the bank, until the retreat,

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(about nine o'clock in the evening,) therefore the troops were not engaged, after that order was given; now the concealment attempted to be proved under this charge, did not take place until Captain Chambers had travelled three hundred yards, after the order had been given.

The evidence on the second charge, would have met the specification better, if the specification were thus, " concealing himself while the detachment with which he was serving, was itself concealed from the fire of the enemy, by order of the commanding officer, and while Captain Chambers himself, was also safely secured;" but I should be sorry, in a case of this description, to descend to any such ground of defence. Let Captain Chambers have all the benefit of his charges and his testimony; he had sought the opportunity too long, he had brooded too long over the materials of this prosecution, to be so easily deprived of the fruits of his labours. I beg leave not to be considered, as making use of expressions that are too strong; the facts will bear me out in my assertions. Captain Chambers had caught at Amherstburg, the report proceeding from Captain Mockler-it did not appear at the time, to have made any impression upon him, for after that report had gotten into circulation, he continued to live with me, upon terms of friendship, and dined with me at the Mess,

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upon my invitation. Unfortunately for my repose, some difficulties occurred between him and Major Muir, of the 41st, a near relation of mine, respecting the affair at the Miami Rapids. Captain Chambers claimed a greater share of the success on that occasion, than the former seemed willing to allow. From that moment, have I felt the effects of his re-I should not trouble the court with the mention of such a circumstance, if it did not serve as a clue to the conduct of Captain Chamders; he, from that moment, appeared determined to reach. through me, the feelings of Major Muir; from that moment, he fostered with a malignant care, the story of the dead horse. Nothing could be better calculated to create disgust, or excite prejudice; he in some measure, adopted this story as his own, he watched an opportunity of giving it a twin brother, alike in shape and form, and of an equally spurious origin, but somewhat of a deeper dye. affair at Sandusky, even before its commencement, appeared to him to be that opportunity, for which he was so anxious. In conversing with some officers, shortly before the attack then in contemplation, he mentioned, that, " many of the officers of the 41st, would shake in their shoes," and as for me, that I had already hidden behind a dead horse: This was sufficiently explicit. Coupling these expressions with his subsequent conduct, with this vindictive disposition, which, the respect due to se,

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this court, could not even prevent him from manifesting, it is evident, that he already feasted his imagination upon the pleasure of finding me deficient in duty—he had resolved it should be so—he spok with oracular ambiguity, but his meaning was protty plain. Once become a prophet, he was determined to accomplish his own prediction himself, by conjuring up facts, that were never in existence, except in his own imagination, and upon the record of this trial. He did indeed watch me, as it would appear from his evidence; he watched me with the eye of a Lynx; he watched me so as to entirely forget himself; there is hardly a fact that he has "dvanced, which cannot admit of contradiction. not tire the court by establishing a parallel between what he has stated, and what he ought to have stated; suffice it to say, that the truth is only to be found in the converse of his testimony, a testimony so destitute of even the common ingenuity of invention, that it can admit of but one general remark.

The facts which took place at Sandusky, in so far as I am concerned, are simply these: Four subdivision of the 41st, the first commanded by Lieutenant Bullock, the second by Lieutenant Gardner, the third by myself and the fourth by Ensign Proctor—the whole under Colonel Warburton, marched from the left to the right angle of the Fort, at about four of the clock in the afternoon, on the second August,

1813. Sometime after we had passed the left angle, a very heavy fire was opened upon us, from the Fort. The greater part of the first, third and fourth subdivisions and nearly the whole of the second, with the exception of a Serjeant and two or three men, broke and scattered into the bush: I used every effort in my power to rally them, I frequently pointed to the Fort and told them, that, that was their object, but all was in vain. I could collect but a few, and with these few, I used the greatest speed to reach the place where Colonel Warburton was. On arriving near the right angle, the fire became equally as heavy as we had experienced it before. A few shots were fired by our men on the right. Having arrived within about twelve or thirteen paces of Colonel Warburton, he gave orders for every man to secure himself, and went with those around him under shelter of the bank. I followed the example of the others and laid myself down, immediately below that part of the bank where I then was. Within a few minutes afterwards, I proceeded to where Colonel Warburton was, Captain Chambers arrived perhaps a few instants before me; he was sitting near Colonel Warburton, I placed myself near Captain Chambers, having him between Colonel Warburton and me. The witnesses who were there present, will state to you, that they came up with Colonel Warburton, that Chambers just arrived on

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the right, for the first time, a few minutes after we had gone under the bank; that had he come up with Colonel Warburton, they must have seen him; that they never heard him say a single word to Colonel Warburton, concerning Mr. Bender, and they might add further, that, had Captain Chambers said any thing, either on my arrival, or when he himself arrived; such was their proximity to Colonel Warburton, that they must have heard it. Yet we find Captain Chambers swearing positively, that he arrived on the right, together with Colonel Warburton, precisely at the same moment, before Colonel Warburton went under the bank; Captain Chambers most probably found himself retarded in the dexterity and agility of his movements, by the thorn in his foot and the ball in his thigh; yet if swearing could render him dexterous and agile, I venture to say, that he would have been there as soon as the best of them. Captain Chambers swears positively, that on his arrival after Colonel Warburton had secured himself, he reported to Colonel Warburton, that he had found me behind a log. I will shew that he never said any such thing, and that, had he said so, the persons present must have heard him. The thorn and the ball, will not account for this, he must account for it himself, he must account for two soldiers having been killed lying down, when they were in fact killed looking over the bank; he must account

for having seen me creeping on my belly, when in fact I walked erect; he must account for having seen me jump from log to log, when in fact there were no logs at all; he must account for having found me behind a log, in a place, which he says, was out of the range of fire, and this by way of securing myself from that fire which could not reach me. How will he account for that vindictive spirit, by which he was so evidently actuated in giving his testimony? Is it a zeal for the service, that has prompted him to make use of the indelicate expressions, which he has mentioned. His testimony in support of this charge, will, I fancy, when reflected upon in some cooler moment, and when compared with the testimony which I shall adduce, furnish him with a long chapter of accountability. He does not know for what purpose it was, that I went from behind the bank and under a heavy fire? I will tell him for what purpose, several of the persons who were present, will tell him for what purpose, they will tell him what he himself knows well-but what he, in his testimony, has remembered to forget, they will tell him, that after having seen two men fall near where we were, I volunteered my services to go and collect the men in the rear, and that too, upon a slight suggestion on the part of my commanding officer, who urged the danger I would be exposed to. I did not tell my commanding officer, that he might

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go himself if he liked, and that I would not get myself shot for him : But the best, the only way in fact, to account for all these glaring contradictions, is, that the measure is now full, that Captain Chambers in fact feels, that either his character or mine, must be sacrificed; he knows that if I am acquitted, he stands branded with the name of a calumniator; if he can crush me, my complaints will be drowned forever in the disgrace of a condemnation. Hence the struggle to convict me, a struggle in which he has put forth all his powers, and in which he has shewn himself in his true colours before you. Let but a rapid glance be taken at his testimony, and the degree of credit due to it, even from his own statement, will at once appear. As Deputy Assistant Quarter Master General, he led the right wing, composed of no more than about one hundred and fifty men; an entire subdivision is unaccounted for by him. Why? Because, had he acknowledged to have seen it, he must also have acknowledged to have seen me rallying my men-he saw me and my subdivision on the left; what became of the subdivisions after? The Deputy Assistant Quarter Master General knows it not-he went entirely to the right, before he perceived they were missing. A Deputy Assistant Quarter Master General losing sight of a whole subdivision on such a small force, exhibits himself in the same midiculous point of view, as

that of a General advertising for his lost army. I shall forbear making any further observations, I beg leave merely to add, that I will furnish satisfactory proof of my conduct before the enemy, both before and since the periods mentioned in the charges. I fear that I have already trespassed too much on the time of the court. I most humbly thank them for the attention and indulgence with which they have honoured me. I have laboured for a long time, under the present accusation. Solong ago as May, 1814. Captain Chambers after having traduced my character at the Mess, gave in a written statement to my commanding officer, which statement has been moulded into the charges now before you; he previously had been officially called upon to prefer charges against me, and he refused; he has been called upon at Quebec, to prefer charges against me, and he has refused. He did not, however, loose any time, he was active in exciting prejudices against me; but fortunately for me no prejudices can gain admission here. On receiving a copy of the statement given by Captain Chambers, I was notified that I could no longer be admitted a member of the Mess. From that period, have I been considered as outcast in my regiment; deprived of the fellowship of my brother officers, I have frequently sought for an investigation into my conduct, but I have sought for it in vain. The day of justice and retribution is, how-

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aver, at length arrived; I have hailed with joy its approach, and I shall feel forever grateful to His Excellency Lieutenant General Sir Gordon Drummond, for having granted it to my earnest solicitations. I have not been able to meet it, it is true, with the same advantages that I could have done before; the chances of v.ar and other circumstances, have deprived me of very material and necessary witnesses; but, I trust, that I have laid sufficient before you, to stablish my innocence.

B. BENDER,

Lieutenant 41st Regiment.

# EVIDENCE ON THE PART OF THE PRISONER.

Serjeant Dukes, of the Glengary Light Infantry,

#### SWORN.

- Q. HAVE you been in the 41st, and how long?
- A. Seven years and six months.
- Q. How long have you been a Serjeant in that Regiment?
  - A. Four years.
  - Q. How often have you been in action?

A Seven times three times with Mr. Bender.

Q. Were you in the action at River Raisin, on 22d January, 1813, on the right, or on the left wing, and in whose company?

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A. I was on the right, in the second grand division, covering Serjeant to Mr. Beader, in Captain Muir's company.

Q. Of what number of men was the right wing composed, when you went into action?

A. I cannot say for the whole wing, but there were about twenty-four, or twenty-five files in our division.

Q. Who were the officers on the right wing besides Lieutenant Bender?

A. Captain Tallon, I saw no other.

Q. What situation did the enemy occupy?

A. They were behind some pickets, which were nearly as high as their chins.

Q. Do you know if Captain Tallon was wounded, if so, how long after the action was he wounded?

A. About half an hour, or three quarters of an hour after the action began—I did not see him, it was reported along the line, that he was wounded and had gone to the rear.

Q. How long did the action last on the right?

A. It lasted about two hours, I cannot say to within a few minutes.

Q. Did you continue to be Lieutenant Bender's covering Serjeant, during the action on the right, if so, state what you know of his conduct?

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A. He quit the line once to go in the front-a man's firelock would not go off, and he went to help him to discharge it. I saw him come into his place again, along the line between both fires; his place was at the right of the grand division-he remained there during the action. We moved up by grand divisions three or four times and charged afterwards-Mr. Bender saying out, come on my lads, charge them my boys, we shall soon have theplace.—The charge had no effect, we went back by signal into the ravine, and took ground to the left, to form on the enemy's left flank; as we were passing along the field, Mr. M'Lean, Aid-de-Camp to General Proctor, came up and I heard him tell Mr. Bender to go and get ammunition from the rear; he went for ammunition, and we made the best of our way to the right of the enemy, to an old barn and some houses; we had not been long behind the houses, before I saw Mr. Bender coming along with ammunition and a sleigh with Nettles, a soldier of the 41st-I saw Mr. Bender push down a fence, to let the horse get the nearest way to the troops; he brought the ammunition up and it was served out to the men.

Q. When you saw Lieutenant Bender coming,

d you see him coming in front, or in the rear of

A. I do not know whether the ravine lay along the field where we were, if it did, he crossed the ravine.

Q. Could Lieutenant Bender have gone to the rear in a shorter space of time?

A. No, nor any other man.

Q. How often did you hear Lieutenant Bender encourage the men on the right?

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A. I heard him at different times, but I cannot say how many.

Q. How near to the picketing, and how often did he lead the men up?

A. To within twenty yards, or perhaps nearer. We charged only once—we had advanced in grand division before, but not so close as that

Q. When he led the men to the charge, were there any other officers on the right wing?

A. No other officer; Captain Tallon was wounded before that.

Q. Was, or was not, the conduct of Lieutenant Bender when on the right wing, that of a brave officer?

A. I would not wish to go into action field, with a better officer.

Q. Did the enemy keep up a heavy fire during the action on the right?

A. Yes.

Q. How many men of the right wing, were left in the field, when you took ground to the left?

A. Between thirty or forty.

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Q. Did the ravine afford complete shelter from

A. Yes, if the men had laid down close.

Q. Did Lieutenant Bender remain with the troops after he arrived from the rear with the sled?

A. He remained until the enemy surrendered, and then he went to the rear to count the dead and the wounded.

Q. Did the action continue after you had taken ground to the left?

A. Every now and then, a shot was fired; the enemy was under cover and we also.

Q. How far was Lieutenant Bender from the barn, when he was ordered to go for ammunition?

A. Between fifty and one hundred yards from the barn, in the rear of which we went to form.

Q. If there had been a horse and sled forty or fifty yards in front of the ravine, must you not have seen it?

A. Yes I must have seen it.

Q. Did you at the time see any horses dead in front of the ravine?

A. I saw none, until I saw the horse and sled with Mr. Bender and Nettles.

Q. Were you at the attack on Sandusky in August, 1913, in whose company and in what subdivision were you?

A. I was covering Serjeent to Lieutenant Bender.

Q. State what took place on that occasion?

A. The troops having been formed between the left of the garrison and the river, the word right and left face was given; the right wing was ordered to march round double quick, to attack the right angle of the Fort. After having passed the left angle, we were discovered by the enemy, who opened a heavy fire upon us; the division in front of us, commanded by Mr. Gardner, gave way and fled to the edge of the bust; the division which Mr. Bender commanded, gave way also. Mr. Bender was between the men who gave way and the garrison, and was waying his sword and calling out to his men frequently, to go that way, pointing towards the garrison. I remained with him. I saw a man firing from the corner of the block house, I had occasion to fire at him once or twice, and Mr. Bender out ran me towards the right of the garrison. Mr. Bender was about twenty or thirty yards in front of me, towards the right angle of the garrison, when word came along from the right to the left, that every man should secure himself as well as he could. At that time I saw Mr. Gardner and saw no more of Mr. Bender.

Q. Did you see Colonel Warburton at the time word was given for every man to secure himself?

A. No, I did not see Colonel Warburton

Q. How far was Lieutenant Bender from the garrison, when the word came for every man to secure himself?

A. No more than twenty yards.

Q. Was Lieutenant Bender on the bank when you covered yourself?

A. Yes, he was towards the garrison, between the ravine and the enemy agreement to the state of the state of

Q Was there at the time a heavy fire from the garrison?

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Q. What efforts did you see Lieutenant Bender make to rally the men?

A. I heard him say many times to the men, came this way men—he made every effort in his power to get the men towards the garrison.

Q. How many subdivisons moved to the right of the Fort, and how many platoon officers were there?

A. Four subdivisions; Lieutenant Bullock commanded the right subdivision, Lieutenant Gardner the second, Lieutenant Bender the third and Ensign Prector the fourth

Q. Did the troops on the right come into action after they had secured themselves?

A. No not at all is the manter and of me!

Q. How many were with you, when you went into the ravine?

A. Seven or eight of Mr. Bender's subdivision, and some of the grenadiers.

Q. Did Captain Chambers ever come to the place where you were secured, to look for men?

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A No never to beat see temperature of

Q. How long did you continue in the ravine?

A. Almost an hour and a half.

Q. Did not Lieutenant Bender use every possible speed to reach the right angle of the Fert?

A. Yes, he did.

Q. Could he not have reached the right angle with the subdivision, had he not been delayed by encouraging the men?

A. He could.

Q. Did any men go to the left in the rear of the ravine?

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A. Not that I know of.

### Examined by the Court.

Q. Have you at any time had any conversation with the prisoner, respecting the evidence you were to give at this Court Martial?

A. No, not at all.

Q. Where you present when the ammunition

brought by Lieutenant Bender, was issued on the 22d January?

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- Q. How far from the enemy was the ravine, at Sandusky?
  - A. One hundred and fifty or two hundred yards.
- Q. When Lieutenant Bender was encouraging the men, how far was Lieutenant Bender from the ravine?
  - A. Not more than ten yards from the ravine?
- Q. Did you at any time see Lieutenant Bender lying under a log, before you got to the ravine?

A. No, I saw no log at all.

- Q. How far was the ravine from the garrison?
- A. Not more than thirty yards from the right angle of the garrison, and about forty from the place where I laid down.
  - Q. Did you see Captain Chambers in the ravine?
  - A. No.
  - Q. How many persons were in the ravine?
  - A. I cannot say, they were scattered about.

## Serjeant Joseph Stagnell.

#### SWORN.

Q. How long have you been a Serjeant, and how long in the 41st?

A. Seventeen years in the 41st, and about five years Serjeant.

Q. Have you ever been in action and how often?

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A. Four times.

Q. Were you in the action at River Raisin, on the 22d January, in what wing and in what company?

A. Right wing and right division grenadiers.

Q. How long did the action continue on the right?

A. About two hours and a half before I was wounded, when our troops retreated immediately to the left.

Q. How near were you to Lieutenant Bender during the action?

A. Within about ten or twelve yards.

Q. Before you were wounded, did you hear Lieutenant Bender encourage his men and see him lead them towards the action?

A. Yes I did several times.

Q. Did you hear Lieutenant Bender order the men to charge?

A. I did:

Q. What are the expressions of which he made use in encouraging his men?

A. He cried, come on boys, come on, (waving his sword in the air,) and follow me.

Q. Was Captain Tallon wounded, if so, how long after the action?

A. About half an hour.

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A. Yes.

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Q. Did you remain any time on the field after you were wounded and how long?

A. Till the action was over.

Q. Within what distance of the enemy, did you see Lieutenant Bender lead the men?

A. Within about fifty yards.

Q. After you were wounded, did you still continue to see him encourage the men?

A. Yes I did.

Q. Did he behave with courage during the whole of the action?

A. In every respect becoming an officer and gentleman.

Q. Did you remain on the field, until the action was over?

A. I did remain on the field as much as two or three hours after we took ground to the left.

Q. Did you see a horse in front of the ravine?

A. No.

Q. If from the time the action began and that the movement was made to the left, there had been a horse and sled, must you not have seen it?

A. Yes.

Q. What number of men remained dead on the right?

A. As many as eighty or ninety.

Q. Were you at the attack on Sandusky in August, 1813, if so, to what subdivision and company did you belong?

A. To the grenadiers, second subdivision.

Q. State to the court what took place, when you marched to the attack.

A. We advanced to the right angle of the Fort, the fire was so heavy that we were ordered to secure ourselves, we laid down, at the same time I saw Mr. Bender coming up with his division cheering them along.

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Q. Did any of the troops give way, when you were going from the left, to the right?

A: Part of the second and third, and some of the fourth subdivisions.

Q. How near were you to the right angle of the Fort, when you saw Lieutenant Bender coming up?

A. Within about thirty or forty yards?

Q. How far were you from Colonel Warburton, when you arrived at the right?

A. Not above a yard or two.

Q. Was Captain Chambers with Colonel Warburton at the time?

A. No he did not come up, until five or ten minutes after. • c. Q. Did you hear Captain Chambers say any thing to Colonel Warburton?

A. No, I did not hear him say any thing.

Q. How near to Colonel Warburton was Captain Chambers, when you arrived on the right?

A. Within a yard or two.

Q. Was there any firing from our troops, when you arrived on the right?

A. A few shots.

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• Q. How long was it after you arrived on the right, that you received orders to secure yourselves?

A. Immediately.

Q. Was Captain Chambers with Colonel Warburton at the time you received orders to secure yourselves?

· A. Yes.

Q. Did you at any time after you arrived at the right, or at any time afterwards, hear Captain Chambers say, that he would go to the rear and collect the men?

A. No.

Q. Had Captain Chambers said any such thing to Colonel Warburton, were you not near enough to hear him, and must you not have heard him?

A. I was, and must have heard him.\*

<sup>\*</sup> The Witness was here asked by Lieutenaut Colonel Moodie, a Member of the Court, if he was sure that what he said was true? The

Q: What is the usual tame of voice of Captain Chambers?

A. A loud tone of voice.

Q. Did you lie down with Colonel Wanburton under the bank, and did Captain Chambers lie down with you at the same time?

A. Not directly, but in the course of five or ten

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Q. Where did Captain Chambers go to, during the five or ten minutes you have mentioned?

A. I never saw him leave the place.

Q. Could be have left the place without your knowledge?

A. No.

Q. How long did he remain in the place you have mentioned?

A. Till about nine o'clock in the evening.

Q. Did you see Lieutenant Bender come up to the place where Colonel Warburton was behind the bank?

A. Yes.

Q. How long had Colonel Warburton been under the bank when Lieutenant Bender came up?

A. About ten minutes.

Q. How far was Captain Chambers from Colo-

question was repeated by the Lieutenant Colonel in a very emphatic manner, and the Witness as emphatically asserted, that he spoke the truth.

nel Warburten, when Lieutenant Bender came up, and where did Lieutenant Bender lie down?

- A. Captain Chambers was about two or three feet from Colonel Warburton, and Lieutenant Bender laid down within two or three feet of Captain Chambers.
- Q. Did you hear Colonel Warburton my any thing about Lieutenant Bender, when Lieutenant Bender came up to the bank?

A. No.

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Q. If Captain Chambers had told Colonel Warburton in his usual tone of voice, that he had found Lieutenant Bender behind a log, could he have done it without your hearing him?

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Q. Did he before, or after his arrival, say any thing about Lieutenant Bender's having hidden himself behind a log?

A. No.

Q. During the time which elapsed between the arrival of Captain Chambers and that of Lieutenant Bender, could Captain Chambers have gone two or three hundred yards to the rear?

A. It was not possible, and he did not absent himself.

Q. When Lieutenant Bender arrived, did he appear to speak to the officers in the usual way?

A. Yes, he did,

Q. Do you recollect, were the officers under the bank with Colonel Warburton, if so, state at what distance they were from each other respectively?

A. Lieutenant Bullock was about two yards from them, Ensign Proctor was close at his feet; Captain Dixon was about two or three yards from Colonel Warburton, I myself and Serjeant Andrew White, and other Serjeants, were within a yard or two of Colonel Warburton.

Q. How long did Lieutenant Bender remain with Colonel Warburton, and those under the bank?

A. About half an hour.

Q. Have you any knowledge of two men been killed near you, while Lieutenant Bender was under the bank?

A. Yes, they were killed about three or four yards from me.

Q. Did these two men belong to the grenadiers, or to the battalion, and were they killed when lying down or standing up?

A. They belonged to the grenadiers—they were killed when standing up.

Q. Did you hear any conversation between Colonel Warburton and Lieutenant Bender, if so, state what is was?

A. I heard Colonel Warburton tell Captain

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Chambers, that if the enemy would sally out of the Fort, they would take them all prisoners, for there were no men there to support them. Lieutenant Bender volunteered his services to go and collect some of the men for their assistance. Colonel Warburton observed also at the same time, that he, Mr. Bender, would be in danger of being killed, but Mr. Bender persisted in going.

Q. When Lieutenant Bender went away from the bank, was, or was he not, very much exposed to a heavy fire from the enemy?

A. He was very much exposed.

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Q. Did the enemy keep up a continual fire, or did they only fire when they saw our men exposed?

A. Only when they saw our men exposed

Q. What direction did Lieutennt Bender take, when he so left Colonel Warburton to go to the rear?

A. The rear of the ravine.

Q. Could you see the place over which Lieutenant Bender passed, on leaving Colonel Warburton, and how far could you see?

A. I could see it for the space of one hundred, or one hundred and fifty yards.

Q. Were there any log in his way when he left Colonel Warburton?

A. Only one in the bush, when I retreated myself, I stumbled over some kind of log. Q. What distance was there from the place where Colonel Warburton was, to the bush you mentioned?

A. About one hundred and fifty yards I suppose.

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Q. Was there any log between the place where Colonel Warburton was, and the bush?

A. No. was in the second of the second

Q. In what manner was it that Lieutenant Bender proceeded to the rear after leaving Colonel Warburton, did he run or creep on his belief

A. He ran, he did not creep on his belly to my knowledge.

Q. Was there not a swamp in the direction Lieutenant Bender took on leaving Colonel Warburton, if so, what distance was it from Colonel Warburton, and did you and Lieutenant Bender sink into it?

A. It was about one hundred, or more, yards from Colonel Warburton; I saw Mr. Bender sink into it and fall.

Q. Was Lieutenant Bender always within your view, from the time he left Colonel Warburton till he reached the swamp?

A. Yes.

Q. When Lieutenant Bender fell into the swamp, did you see his hat fall off?

1 100 1185 120 15 11 11

A. Yes I did. To Ami Angel and

Q. Did his hat fall at any distance from him, so as to be out of his reach?

A. Yes. All distributed they will be well

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Q. Do you know if any person was near Lieutenant Bender when his hat fell off, if so, who was that person, and did Lieutenant Bender ask him to pick up his hat?

A. There was a man by the name of Prangle, to whom Mr. Bender's hat was nearer than to himself, and Mr. Bender asked him to pick it up.

Q. Did you hear Lieutenant Bender say any thing to Prangle about his hat, if so, state what it was?

A. I heard him say nothing, but asked to pick-up his hat:

Q. What was Prangle's answer?

A. I did not hear Prangle make any answer.

Q. What time did Lieutenant Bender take to extricate himself from the swamp, and during the time he remained there, was he exposed to the fire of the enemy?

A. He was two or three minutes, and very much exposed.

Q. Did you hear any thing said among the officers, when Mr. Bender fell?

A. I heard Colonel Warburton observe, that he was afraid poor Bender was shot.

Q. Did you hear Lieutenant Bender say any

thing after he had gotton out of the swamp, if so, relate what it was?

A. I heard him call to Captain Chambers and Colonel Warburton, saying, that General Proctor wanted them.

Q. Did any one answer Mr. Bender, who was that person, and what said he?

A. Captain Chambers said, that if General Proctor wanted them, he might come, they were not going to expose themselves to the enemy's fire.

#### Cross Examined.

Q. Had you any communication with the Prisoner, respecting the evidence you were to give, before the charges were exhibited against him, or prior thereto?

A. No.

Q. Has the Prisoner, or any person on his behalf, held out any reward to you, to give your testimony in any particular manner?

A. No.

Q. Have you not had particular conversation with the Prisoner's Counsel, since his arrival in this place?

A. No.

Q. Have you not had communication with the Prisoner's Counsel, at the bar of the Union Hotel?

A. I saw him once there, not privately.

Q. You have stated, that in the action of the 22d January, 1813, you heard Lieutenant Bender encouraging his men, was it before or after the charge?

A. Both, before, after and during the charge.

Q. How often did the men charge?

A. Only once, and it had no effect.

Q. How long after the commencement of the action, was the charge made?

A. About two hours and a half.

Q. How long was it after the charge, that Captain Tallon was wounded?

A. He was wounded before the charge.

Q. Did you not see Lieutenant Bender quit his station on the right, on that day, and if so, for what purpose it was the state of the st

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Q. If he had quitted his division, must you not have seen him?

A. Yes. Charles

Q. On what part of the field were you wounded, and where did you remain after you were wounded?

A. At the last charge over the ravine, near the enemy, and I remained in the same place.

Q. In the place were you remained, could you see Lieutenant Bender, and did he still continue to encourage his men?

A. I saw him and he still encouraged his men,
I was within two or three files of him.

Q. When the men took ground to the left, what distance did they go?

A. They went out of my sight.

Q. How long after you were wounded, did you see Lieutenant Bender continue to encourage his men?

A. As far as I could see him. to out was

Q. Did the troops take post behind some barns?

A. I saw them going to the barns, but did not see them after they got there.

Q. Did Lieutenant Bender accompany them to

A. Yes, as far as I saw him go.

Q. Was there any Artillery posted in front of the line, previous to the charge you have mentioned?

A. Yes.

Q. From whence was the ammunition for this Artillery procured?

A. I cannot say.

Q. Where did the Artillery remain, after the charge was made?

A. Those that had men to take them away, went with the line, there were two guns to the best of my knowledge, left in the field, in front of the ravine.

- Q. How long were they in front of the ravine?
- A. Till the enemy surrendered.
- Q. How long did you remain there yourself?
  - A. Till after the enemy surrendered.
- Q. Can you positively say, that no ammunition accompanied the guns, which were in front?
  - A. I did not see any.

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- Q. Did you see Captain Mockler pass along the front of the ravine, after the men had retreated?
  - A. I did not see him in the field
- Q. If he had passed that way, must you not have seen him?
  - A. Had he passed in front of me, I should.
- Q. In the action at Sandusky, did the right wing pass in a line parallel to the right angle of the Fort, if so, at what distance?
  - A. They did at thirty or forty yards distance.
- Q. How far was the edge of the ravine, from
  - A. About thirty or forty yards.
- Q. You have stated, that two men were killed behind the bank, while standing up; did you see them when they received their wounds?
  - A. I did.
- Q. When you saw Lieutenant Bender call to Prangle for his hat, did you hear Colonel Warburton say any thing, and what?

Traile now then the !!

A. I did not hear him say any thing.

## Examined by the Court.

Q. Did any other officer advance at the River Raisin, at the time Lieutenant Bender made his charge?

A. None that I saw that we saw you to be saw you

Q. How near did you approach the picketing?

A. Within about twenty or fifty yards

Q. At Sandusky, how near did you see Lieutenant Bender approach the Fort

A. Within about fifty yards.

Q. What distance was Lieutenant Bender from the ravine, when you saw him fall?

A. About one hundred yards, from that to one hundred and fifty.

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Q. Were you standing up at the time?

A. No, lying down.

Q. Did Prangle go with Lieutenant Bender from the ravine, or was he lying in the swamp?

A. To the best of my knowledge, he went after him.

Q. Was General Proctor near Lieutenant Bender, when he fell?

A. I did not see him.

Q. Did Lieutenant Bender bring up any men with him, when he volunteered that service?

A. No.

Q. At what time of day was it that Lieutenant

Bender left Colonel Warburton, to go and collect men?

- A. Before sun set.
- Q. If any other officer besides Lieutenant Bender, had advanced to the charge, at River Raisin, would you not have seen them?
  - A. I think I should.
- Q. How soon after the action began, (at River Raisin,) were you wounded, and were you not insensible when you were taken up?
- A. About two hours, or two hours and one quarter after the action, I was sensible enough when I was taken up, only I was cold.
- Q. Did you hear Captain Chambers remark any thing to Colonel Warburton, respecting Mr. Bender, while you lay near them at Sandusky?
- A. No.

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- Q. Were the banks of the ravine equally high on both sides?
  - A. Yes, pretty nearly.
- Q. Did you see Mr. Bender at the time he cried to Captain Chambers and Colonel Warburton, General Proctor wanted them?
  - A. No.
- Q. For what puspose did you go to the Bar of Union Hotel when you saw the Prisoner's Counsel there?
  - A. I went to speak to General Proctor.

Q. Did Lieutenant Bender come back after he went to the rear, at Sandusky, to collect men?

A. No.\*

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#### John Nettles.

#### SWORN.

Q. Have you been in the 41st Regiment, and when were you discharged?

A. I have been in the 41st sixteen years, I was discharged on the 26th May last.

Q. Were you on the 22d January, 1813, at River Raisin, and had you any share in the action?

A. I was there; I was not in the action, but was driving a King's horse and deigh with spare ammunition for each gun—I was stationed within fifty or sixty yards in rear of the guns.

Q. How far were you stationed from the place where the wounded were?

A. About four hundred yards.

Q. Did you at any time during the action go where the wounded were?

A. No. I did not.

<sup>\*</sup> Immediately after Serjeant Stagnell had given his testimony, he was confined to the guard house. The other Witnesses for the Prisoner, soon became informed of his imprisonment. Although no arime was alleged against him, he was detained until the rising of the Court, which took place about ten days afterwards.

Q. Do you know if there was a ravine in front of the enemy.

A. There was a ravine, rather inclining to the left.

Q. Were you in rear of the ravine, and how

A. I was, as far as I can judge, about two hundred yards in rear.

Q. How long did you continue there?

A. I cannot exactly tell, it was the best part of the time the action lasted.

Q. While you were there, had you in charge a horse and sled with ammunition?

A. Yes. or medican it this good to their tends by

Q. Did you see Lieutenant Bender at any time, and how long after the action began?

A. I saw him about twelve o'clock, at the side of the ravine, and I asked him which was the nearest way to our troops under arms, and to the ammunition works.

Q. Did he tell you to bring the sleigh there?

A. He told me to come along, and he would show me the way; he went along in front of the horse, walking as hard as he could.

Q. State what took place afterwards.

A. After we had crossed to the ravine, there was a Militia man shot when we passed the ravine, we turned to the right, we took down a railing

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soner, which and Mr. Bender assisted me to let the horse and sleigh through, we got up to the place where the troops were and there we continued until I was ordered home.

Q. Where did you find the troops?

A. Behind some old log houses, sheltered from the enemy's fire.

Q. How long was it before the enemy surrendered, that you came up with the sled?

A. About three hours.

Q. Were the houses you have mentioned, to the right, or to the left of the enemy?

A. To the right.

Q. Did you see General Proctor there when you arrived?

A. Yes. Town I with all with

Q. Was the ammunition taken out of the sled, when you arrived where the troops were?

A. It was in about the course of an hour after we arrived.

Q. When Lieutenant Bender first met you, did he ask you if you had any ammunition?

A. No, he did not. may and an are free and

Q. Was the ammunition in a magazine, such as is commonly used for ammunition?

A. No, it was in a quarter cask, hooped with a head to it, it was full of ball cartridges.

Q. Did Lieutenant Bender appear anxious to ar-

rive as soon as possible at the place where the troops were?

A. Yes. seems this on you of sufficient if A.

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Q. In going to where the troops were, were you exposed to a heavy fire?

A. Yes. and he proved the provention

Q. Did Lieutenant Bender appear to you to be the least afraid, or did he shelter himself from the fire?

A. Not in the least that I observed.

Q. Did he go in front of the horse and sled?

A. In front during the whole time.

Q. What time did it take you to go from the place where you met Lieutenant Bender, to the place where the troops were?

A. About three quarters of an hour, as near as I can guess.

Q. Was Lieutenant Bender exposed to the whole of the fire of the enemy, during that time?

A. Yes, he was.

Q. Did he act as a brave officer?

A. He did act in a manner becoming both an officer and a gentleman.

Q. In going to where the troops were, did you pass a bridge that was on the Ravine?

A. Yes.

Q. Supposing yourself to be where the enemy

were, would that bridge be to your right or to

A. It would be to my right.

Q. Did you drive the horse and sled the whole of time?

A. Yes.

Q. Could Lieutsnant Bender have put himself under shelter, during any part of that time without you seeing him?

A. No. Seem of Albert of

Q. Before you saw Lieutenant Bender, did you see Captain Tallon any where, and if so, where?

A. No. og tor bow paner il tops i mer bed W. . Gr

Q. When you first saw Lieutenant Bender, did he appear to you to be coming from the ravine?

A. No.

Q. From what place did it appear that Mr. Bender came?

A. He appeared to have come from the place where the engagement had been, he appeared to me to have been in search of me.

Q. Did you see in the rear any men not wounded?

A. No, none at all. a recent sugh suggest like .

Q. In going to where the troops were, did you make a halt for any other purpose than making a passage for the sled?

A. No.

Q. Did General Proctor see you arrive with the sled, and did he say any thing to you, and what?

A. Yes, he saw me, but said nothing.

Q Where was the ammunition put, when taken out?

A. I cannot tell.

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Q. Were not the whole of the troops under cover, when you arrived?

A. Scattering about and under cover too.

horse ? Manual and the Manual Street Street

A. Very wild and fractious.

Q. Had it not been for that circumstance, would you not have arrived much sooner?

A. Not much as we had a fence to take down.

#### Cross Examined.

Q. Do you know that in the action of 22d January, the troops were ordered to charge the enemy behind the picketing?

A. No.

Q. Did you advance at any time across the ravine with the sled under your charge, except when you crossed it by the bridge?

A. No.

Q. When you were going with the sled, did you pass the front of the ravine?

A. Yes.

Q. Did you pass over that part of the ground in front where there was a picketing?

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h

A. Yes. mid torr him and our wow art and .

Q. Did you pass along in a line with the pick-

A. I cannot tell ...

A. Yes.

Q. Did you see any wounded men in your way, besides the one you have mentioned?

A. Nor groves where has mode varieties d. A.

Q. You stated that you was stationed in front of the ravine, how could you be so, without passing the ravine?

bridge.

Q. What part of the troops were stationed in front of the place where you were stationed?

A. There were some men of all descriptions, Indians, Militia and 41st Regiment.

Q. How was the ammunition for the guns packed?

A. In square boxes.

Q. At what time of day did you take your station, two hundred yards in the rear of the ravine?

A. At the commencement of the action?

Q. Where were the guns, when you were two hundred yards in the rear of the ravine?

A. One was near the Surgeon, and the remainder close by the American Garrison.

00
Did you see Captain Meckler during the ac-
tion on that day?
A. No, not at all
Q. At what time of day did the enemy bring out
A. He was nounded in the Lack gall stide and
Q. Were were at any Aloca contribute Akisa
Q. Was there any other sled with the army ex-
cept the one you had? .o.A .A
A. Not at the time I went where the troops
Lieutenant Bender, from how in wester three crowy
Q. Where had you been before you took your
initiation in rear of the ravine roup o mini W . A
A. I was fifty or sixty yards in rear of the guns.
Q. Was there any other man of the 41st who
had charge of a horse and sled, besides yourself,
that day it works who waspup a mouth . A.
A. There was an inhabitant, a hired man, he
went to the field, but returned before I got to the
sed the picketing face governoes a reached eliant
Q. What distance was it from where you met
Lieutenant Bender, to where General Proctor
rwas desire range when and rook bile would it? .
A. About half a mile, as near as I can judge.
Q. Was your horse wounded at all during the
faction of color manner of the fire graph of 1.5 the
Levis that the new was quite in to Art C.
Q. What was on the other sled?
A. I do not know.

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Qa Was therbica field	i magazine on the other
sled?	tion on that day?
A. I do not know.	Al Transfer at all.
Was the other hor	se wounded Nover in
A. He was wounded in	the fore foot mini w edi
Q. Were you at any ti	me absent from the horse
and sled Pale diller Soils no	Q. West there early sub-
A. No. will could one taken	cept the one you had?
acto Qui When you were	going to the barks with
4	how far were the enemy

A. Within a quarter of a mile, within musicot shot of human miles within musicot

of Q. Where had you had before you look going

of Q. At what distance were the great guns. Som

A. About a quarter of a mile, as far as locan judge.

sed the picketing?

made the gaptor the horse and sled to get through.

Q. Where did you leave the guns when you went with Lieutenant Bender to the field?

A. I left them in the field, when I was ordered back to the gap where the ammunition was left before the action, the gap was quite in the rear of the field.

Q. Did you see the guns to which you were at-

tached, efter you were ordered back to the gap for amounition?

A. No.

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# Ensign Proctor.

With the sworn.

Q. Were you at the attack on Sandusky, on 2d August, 1813?

A. I was. we sought to the total proper at it.

Q. Did you command any subdivision, and to what wing, right or left, did it belong?

A. I commanded the fourth subdivision of the division Mr. Bender commanded, I belonged to the right wing.

Q. State to the Court what you know of Lieutenant Bender's conduct on that day.

A. The right wing was formed in four subdivisions, Colonel Warburton gave the word.—After we had proceeded about one hundred paces, beyond the left angle of the Fort, I perceived the column breaking in front and run to the bush under cover of ground. When I found my men would not advance, I thought it my duty to join the officer commanding, whom I found nearly up to the right angle of the American Fort. The officer

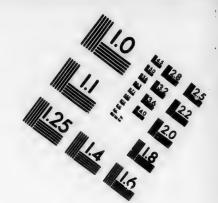
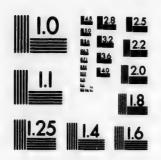


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GIN GENERAL CONTRACTOR OF THE STATE OF THE S





was Colonel Warburton; he was pretty near the picketing, protected by a small rise of ground.

Q. What occasioned the breaking of the troops?

A. I suppose it was the overwhelming fire from the left angle of the Fort, while we were passing it.

Q. Did you see Lieutenant Bender when the troops broke, and what was it you saw him do?

A. I saw him encouraging his men, both by word and action.

Q. Did it, or did it not appear to you, that Lieutenant Bender did every thing in his power, to bring on his men?

A. It did windsa nun hammer and odf

Q. When you saw him encouraging the men, was, or was not his conduct that of a brave officer?

At Irwas aid destinants or releads all no

Q. How far was he from the Fort at the time, was he nearer to it than his men, or were his men between him and the Fort?

A. Between forty and sixty paces from it, perhaps more, he was between the men and the Fort.

Q. Was he at the time exposed to the fire of the enemy?

A. Yes, certainly.

Q. Do you recollect the expressions he made use of in encouraging his men, if so, state what they are?

A. I do not know what expressions he made use

of, he made a number of gestures, he spoke a good deal, would be de not not be the deal of the control of the c

Q. Do you recollect having heard him say, "come on boys, come on," or words of a similar meaning?

A. I don't know whether he made use of those expressions.

Q Do you recollect seeing him waving his

A. I recollect seeing him wave his sword.

Q. When you reached the place, where Colonel Warburton was, how far did you find Colonel Warburton from the Fort

A. Perhaps twenty paces.

Q. Can you say how long Colonel Warburton had reached the place before you?

A. He could not possibly have been long, he had just sat down there.

Q. Had he reached the right angle, three, four, or five minutes before you?

A. I cannot exactly say, but it was a very short time.

Q. When you arrived at the place were Colonel Warburton was, did you shelter yourself with him under the bank?

And dides wife in about the order of product

Q. How near to Colonel Warburton did you lie down? The Transport of the state of th

A. Close to his feet.

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came up to Colonel Warburton to lie down?

A. Do rive repositions in river I care ton bit A Ame

Q Did you see Captain Chambers there at any time after you had laid yourself down if so, how long after was it, that you first saw him?

A. He came up hree or four minutes after

Q. When Captain Chambers came there, did he lie down also, if he did, was it near, or far from Colonel Warburton?

A. When he first came, he stood beut and then laid himself down near Colonel Warburton.

Q. When you came up to where Colonel Warburton was, did you see Lieutenant Bender there?

A. No. 11 Mention on miles of their ages to referred their

Q. Did you see him there at any time after you came up, if so, state how long it was after you came up, that you saw him there?

A. I saw him come up two or five minutes after Captain Chambers, he followed him.

Q. Did he lie down with the others?

ed.

Q. How long did you remain, and how long did Colonel Warburton remain, in the position you have described?

A. Until about eight in the evening, when the troops had gone off.

to Q. What is the benal tend of voice of Captain you Chambers ? Santa. ask Rather loudy on north men ow and the allo. Q. Did you hear Captain Chambers at any time any how after his arrivel, or after that of Lieutenant Bender, say any thing about having found Lieutenant · 4 时度 [2] Berdenmidern high dramers son south A did button, or some of ex offices, that if the New Maney Quelf he had said any thing, must you not have rom heard it 3th wave out morn sombleises, be fireer Bet mys mak. I thinked wintto tinleto be had whispered or hen gave it in writing; a report efithat kind must have I My Marie Varstruck and Dain stee brough to hear him if he died wooderin hindaunt teneral viside. stand auf refe re ? Q. How long did Lieutehadt Bender remain · 如 · · · with you and Coloriel Warburton Minder the bank? you diers to go clausch and list that desir high backers VOL Q. While the remained there was there any 1... coolness manifested towards him by any of the offter ficers! then present down on brightinde may omit off . Willer out thee at those who showed then. ं सार श्रीहरू Q. Did not he and his brother officers, appear to rivact together asbusial Rossic and universitate to A. I saw no difference by the national springs with f did Q. After the troops on the right had concealed vou themselves, did they on that day, come into action?

the bank.

the

A. There were some shots fired from behind

there?

A. When we were lying down-Colonel Warburton desired them to stop.

leaving the bank, and whither did hergo has and

A. There was a remark made by Colonel Warburton, or some other officer, that if the enemy advanced they would cut us to pieces, before we received assistance from the rear. Mr. Bender, made an offer to go and collect the men in the rear. I afterwards saw him gong at a gong and it ever

der the bank, had any person been sent towards the Fort to watch the molidne of the enemy?

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Aug. 11 16.

diers to go close to the Fort, and give information if any attempt was made to sally out.

Q. Did the enemy keep up a continued fire, from the time you sheltered yourselves under the bank?

A. They only fired at those who shewed them-

Q. On leaving the place behind the bank, was Lieutenant Bender fired at American and American

mi AvaHe was. 18 : 800 no chenal editionalis.

Q. From the time he left the bank, how long did he continue exposed to the fire?

A. About five minutes.

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Q While exposed to the fire of the enemy in going to the rear, did you see him creep on his A. They we to commence to westernichted

A. I am not quite certain, I believe he endeavoured to cover himself as well as he could.

Q. Were not those under the bank, where Lieutenant Bender had been, perfectly secure from the

A. They were as long as they remained quiet.

Q. Did you see Lieutenant Bender get embarrussed in a swamp, and was he, while in the swamp, exposed to the fire? of a country out or product appoint

A. I saw him in low ground, I cannot say whether it was a swamp—he seemed embarrassed while there, he was exposed to the fire of the enemy.

Q. Did he fall in the low ground, and were there any observations made by the officers?

A. I heard it said he was killed, he fell down after some shots were fired! 'to sould sale o'll o

Q. Did you hear Lieutenant Bender crying out? A. I think I could distinguish Mr. Bender's voice, saying that the General wanted Captain Chambers and Colonel Warburton in the rear.-Captain Chambers made some answer, but I can-

Q. At the time you retreated from behind the bank, was the moon up: and year. In the second dis-A. It was Prince out or more than well allow?

not say exactly what it was.

Q. Were not the troops ordered to wait until the moon had hidden itself behind some clouds?

A. They were recommended to wait until the moon was obscured by a cloud.

Q. Did you take the same direction in going from the bank, that Lieutenant Bender took ?

A. Yourness when you find a history to refer

#### Cross Examined - And the Market

Q. How far was it from the place where the troops broke, to the place where Colonel Warburton was under the bank?

A. About one hundred and fifty pages as we went,

Q. Did you see Lieutenant Bender after the moment that the troops broke as you have described?

A. No. willy the spirit will be printed to the

Q. Did any man go with him to the rear?

A. To the best of my recollection there was

Q. Did Lieutenant Bender return to the bank?

A. He never came back.

Q. Did you see Captain Chambers quit the bank after you first saw him there, until the whole retreated?

A. I am under the impression that Captain Chambers went away before the last retreat, after Mr. Bender had gone to the rear. tilithe

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Q. How long after the troops broke, did Lieutenant Bender join Colonel Warburton in the ravine?

A. About six or ten minutes.

Q. Were there any men with Lieutenant Bender or Captain Chambers, when they came up to where Colonel Warburton was?

A. About three or four.

Q. Did you hear Captain Chambers tell Colonel Warburton he would go to the rear to collect the men?

A. I do not think I did.

Q. Did you see Captain Chambers at any time during the advance to the ravine?

A. I did not see him until I saw him in the ravine.

Q. Did you hear the word given for every man to secure himself?

A. I heard Colonel Warburton tell the men to keep close under the bank.

Q. Was it before, or after the arrival of Mr. Bender under the bank?

A. I cannot say.

Denis Noonan.

SWORN.

Q. Have you been a soldier in the 41st Regiment—how long, and when discharged?

A. I have been sixteen years, and discharged 24th May last.

Q. How often have you been in action?

A. In one general action.

Q. Were you in the action at River Raisin, on 22d January, 1813, in the right or left wing, and what division?

A. In the right wing, in Captain Muir's company,

Q. Who were the platoon officers on the right, at the commencement of the action?

A. Lieutenant Bender, second grand division, and Captain Tallon, first grand division—I know no other officers.

Q. Do you know that Serjeant Dukes was Lieutenant Bender's covering Serjeant?

A. Yes, he was.

Q. When did the action begin, and how long did it last on the right?

A. The action began at day break, I left the field before the action was over on the right, being wounded.

Q. How long after the action commenced, were you wounded?

A. About two hours.

Q. How far were you from Lieutenant Bender during the action?

A. Ten or twelve files.

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Q. Had you an opportunity of seeing Lieutenant Bender during the action?

A. Not during the whole of the action, but I heard his voice several times, after I was wounded. I saw him and spoke with him.

Q. When you heard Mr. Bender speak, what did he say?

A. He used encouraging words to the men.

Q. When you were wounded, what did you say to Lieutenant Bender?

A. The fire at that time was very heavy, I called out several times to him, saying that I was severely wounded, and should leave the field: he told me he could give me no assistance, that I must go to the Doctor, for that he himself expected to be knocked down every moment.

Q. Did he appear to you cool and collected at the time?

A. He did.

Q. Was not the fire very heavy from the encmy at the moment?

A. It was very heavy.

Q. How long did you remain wounded in the rear of the line, before you left the field?

A. About fifteen minutes.

Q. During that time did you see Lieutenant Bender?

A. I did, it was during that time I called to him.

Q. Did you hear him encouraging his men, and see him lead them to the charge?

A. I heard him encouraging his men to keep on firing, they did not charge during that time; the word charge was repeatedly called, during that time, along the line, from right to left. I do not know who began the word.

Q. Did the General come to the rear of the line, while you were lying wounded there?

A. He did, and told me to go to the Doctor, shewing me where he was.

Q. When you were lying, what officers did you see on the right wing beside Lieutenant Bender?

A. I do not recollect seeing any.

Q. When Lieutenant Bender told you to go to the rear, did you go accordingly?

A. I did, as soon as I could.

Q. Do you know that Captain Tallen was wounded in the beginning of the action, and did you see him in the rear among the wounded?

A. Captain Tallon was wounded—when I got to the rear, I heard he was gone home.

Q. Did you see in the rear among the wounded, any who were not wounded?

A. I saw some with the Doctor assisting him, who I believe were not wounded.

Q. Were you present on the field when the

troops attempted to charge the enemy, who were behind the picketing?

that.

Q. Did you see any sled, and of what description, in the field?

A. I saw Nettles, the king's carter, with a sled with ammunition

Q. Was there any one with Nettles have a ...

A. I saw no one.

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Q. Did Lieutenant Bender leave his division during the action while you were with it?

not see him during the whole of the action.

Q. While you were in the rear among the wounded, did you see Lieutenant Bender there at the time the action was going on ?

A. Non and graphs of my of mongration of

# Thomas Neil.

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### · 上海南南 Work work hand

- Q. How long have you been in the 41st?
- A. Seventeen years next October.

will be with a whole the analysis of the state of the state of

- Q. How often have you been in action?
- A. Eight or nine times.

- Q. How often have you been in action with Lieutenant Bender?
- A. Four different times.
  - Q. What were those actions?
- A. River Raisin, Miami Rapids, Brownstown, and Buffalo.
- Q. At the action of 22d January, in what wing, and in whose company were you?
- A. I was in Lieutenant Bender's division, in the right wing.
  - Q. What distance were you from him?
  - A. Four or Five files in the rear rank.
- jeant? who was Lieutenant Bender's covering Ser-
- A. Serjeant Dukes.
- Q. How long did the action continue on the right?
- A. I was wounded before it ended, it commended ced one hour and a half before I was wounded.
- Q. Did you leave the field before, or after the troops charged the enemy behind the picketing?
  - A. Before.
- Q. At what distance were you engaged at the time Lieutenant Bender went in front to pick up the firelock?
  - A. About two hundred yards.
- Q. Were the enemy at the time firing with mus-
  - A. With musketry.

## Examined by the Court.

Q. Did you during the action, see a horse and sled in front of the raying?

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### Lieutenant M'Lean, 41st Regiment.

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#### SWORN.

Q. Were you in the action at River Raisin, on 22d January, 1813, and in what capacity?

A. I was Aid-de-camp to Colonel, now General Proctor.

Q. What was the strength of the right wing, and who were the platoon officers?

A. I cannot exactly say; there were altogether in the field one hundred and twenty one rank and file of the 41st, they were divided into two wings nearly equal. The platoon officers were Captain Tallon, who commanded the right wing, and Mr. Bender, who commanded the second division.

Q. How long did the action last on the right?

A. Two hours and a half, I think.

Q. Did you, or Colonel Proctor, leave the field during the action?

A. No.

Q. Had you an opportunity of witnessing the conduct of Lieutenant Bender during the action?

A. The second division fired, without being commanded. I saw Mr. Bender endeavouring to prevent them. I saw him afterwards about five or six minutes, previous to the retreat, advance about six or seven yards, and pick up a firelock. I afterwards saw him, while retreating to the ravine, collecting his men.

Q. Was, or was not, the fire of the enemy, while he advanced to pick up, the firelock, very heavy?

A. It was the heaviest fire during the action.

Q. Did you hear, or see him encouraging his

A. I could not hear him on account of the noise.

tion Page 200 and the leave his division during the Acc-

A. No-not to my knowledge. I do not think he could have done it without my observing him.

Q. From what you have seen of Lieutenant Bender's conduct during the action, would you, or would you not, think him capable of misbehaviour before the enemy?

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A. No, I would not think him capable.

Q. Did the troops retreat to the ravine, in consequence of an order to that effect?

A. Some retreated without an order, having broken before the order was given. The ravine was about one hundred yards from the enemy.

Q. Where did the men go, who had broken before the order was given?

A. They went to where the Surgeon was.

Q. At the time of the retreat, what were the orders?

A. The orders were to retreat to the ravine and take ground to the left.

Q. When in the ravine, did you give any orders to Lieutenant Bender?

A. When in the ravine, I remember asking Mr. Bender what became of the men. I desired him to go to the rear and collect them—I told him to bring up ammunition. I do not recollect whether it was in the ravine, or if I called to him afterwards.

Q. Did Lieutenant Bender proceed to the rear accordingly?

A. Yes.

Q. Did the troops in the mean time take ground to the left, and what took place?

A. They went on towards the left, and took cover under some houses and barns.

Q. Did any of the troops remain in the ravine, after your arrival on the left?

A. There might have been some.

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Q. What was the strength of the right division at the time of the retreat?

A. I suppose not above twenty or thirty men.

Q. Do you know whether Lieutenant Bender sent, or brought up any men from the rear?

A. Some men were sent up from the rear—I know not whether Mr. Bender sent them; there was no other officer in the rear.

Q. Was it after your arrival on the left, that the men came up?

A. Some came up during the retreat, and some after our arrival.

Q. Do you know if any ammunition was brought up after your arrival?

A. Yes, one sled with ammunition, in a quarter cask, and the men were ordered to supply themselves. I think the driver was Nettles.

Q. Did you see Lieutenant Bender there at the time?

A. I do not recollect who were the officers on the left.

Q. Was the action continued after your arrival on the left?

A. No, there were some men firing from behind the barns, contrary to orders.

Q. What was the nature of the ground in front of the ravine?

A. It was plain.

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Q. While in the ravine, and taking ground to the left, did you see a horse and sled in front of the ravine?

A. No, I did not, which is the stage of the first

Q. Had there been at the time, a horse and sled in front of the ravine, must you not have seen it?

A. I think I must many disking and it is

Q. How long after your arrival on the left, did the enemy surrender?

A. About an hour.

Q. After they had surrendered, did you give any, and what orders?

A. I gave none that I recollect.

Q. Did you after the action, give him orders to number the dead on the field?

A. I do not recollect.

Q. What was the distance from that part of the field occupied by the right wing, to the barns on the left?

A. About four hundred or five hundred yards.

Q. Were you in the action at Sandusky, on the 2d August, 1813, and in what capacity?

A. I was as Brigade Major to General Proctor.

Q. Did you see Lieutenant Bender after the troops advanced to the right angle of the Fort, and when and where?

A. I was sent by General Proctor, with orders to the right—I saw Lieutenant Bender without his

hat, a few minutes after, he picked it up and put it on; this was a little before sun set, about twenty yards from where Captain Chambers and Colonel Warburton were.

Q. Did you see a man by the name of Prangle, near him at the time?

A. I think I did, a little on his right, one pace or two.

Q. In coming to the place where you saw him, did you meet with any officers?

A. I met the Adjutant a little farther, with about twenty men under cover.

Q. For what purpose did you go to the place where Mr. Bender was, and what took place after you saw him?

A. I went to enquire where Colonel Warburton and Captain Chambers were; I think Mr. Bender said they were just before him. I told him to tell Captain Chambers and Colonel Warburton that it was General Proctor's orders to bring off the troops immediately, if possible. He then called to Captain Chambers, but I heard no answer.—When I found that, I returned to see whether I could get to Colonel Warburton and Captain Chambers. At this time Mr. Bender had changed his position. I called Prangle and asked him where Captain Chambers was, he pointed with his finger just before him. I went on about a yard

put or two and called Captain Chambers, and then told him that General Proctor's orders were for Colonel Warburton to bring off the troops.—He answered, it is impossible; how can I until after dark.

Q; At what time did the troops retreat from the right angle of the Fort?

A. It was between eight and nine o'clock.

Q. Wasit moon-light?

A. The moon was up, but they were obliged to wait the opportunity of the moon being covered by a cloud.

# Cross Examined.

Q. At the action at River Raisin, did you advance at the charge of the enemy behind the picketing?

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Q. Did you see Lieutenant Bender advance with his division?

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A. I could not tell who the officers were with the division.

Q. When did you first see Lieutenant Bender, after the retreat to the ravine?

A. In the ravine.

Q. How long before the charge, had you last seen Lieutenant Bender?

A. I saw him when his division was advancing to form in line.

charged is standard and are to the before they

Warrian one to have the tomb smile profeshed.

Q. Did you see Captain Mockler come into the ravine, if so, was it before, or after you saw Lieutenant Bender collecting his men?

A. I think I saw him in the ravine, I do not recollect if it was before, or after I saw Mr. Bender collecting his men.

Q. Had the enemy retired behind the fence at the time you saw Lieutenant Bender pick up the firelock?

A. They were then firing from the picketing through holes. All reveal is control of the second to th

• Q. How far were the troops from the fence, when he picked up the firelock?

A. About sixty or seventy yards.

Q. Were you near the division which Colonel Warburton commanded, when he advanced to attack Fort Sandusdy?

A. I did not go with the right division. All 1 did not go with the right division.

Q. Did you see the troops lying behind the bank when you spoke to Captain Chambers?

A. I saw some, but not there.

Q. Did you either in the action at River Ruisin, or at Sandusky, see any thing improper in Lieutenant Bender's conduct?

A. No.

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laisin, LieuQuilid you observe a horse and sled in front of the ravine, during the time of the action on the right, and after the Newfoundland Regiment had charged?

A. I saw none between our line and the enemy.

## Ensign Fitzgerald, 41st Regiment,

### sworn.

- Q. Were you at the attack on Sandusky, on the 2d August, 1813?
  - A. I was.
    - Q. Were you in the right, or left wing?
  - A. In the right wing.
- Q. State what happened on your advance to the Fort.
- A. The second division of the right wing broke, and shortly after they were desired to cover themselves, by order of Colonel Warbarton.
- Q. Did you see Lieutenant Bender when the troops broke, and what did you see him do?
- A. I saw him ten or fifteen minutes after, at some distance from me, rather to my right, with his hat off.
- Q. How far were you from the right angle of
  - A. I think about one hundred yards.

right of you?

A. About twenty paces.

Q. When you saw him, was he above the bank?

A. He was above on the bank, on the other side.

Q. Were there any men with you at the time?

A. There were ten.

Q. Do you know where Colonel Warburton then was?

A. I did not see him, but I know he was farther to the right.

· Q. Had he reached the right angle?

A. I did not see him.

Q. Did you see Lieutenant Bender at any time afterwards?

A. No, not until dark.

Q. Did you see Captain Chambers?

A. No, I did not. if the of the second secon

Q. Could Captain Chambers have passed, either in front, or behind the ravine, without you seeing him?

A. He could not have passed in the ravine without my seeing him.

Q. Were you ever in action with Lieutenant Bender, after the attack on Sandusky?

A. I was at Black Rock and the state of the

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Q. Had you an opportunity of witnessing his conduct there?

A. I did not observe him particularly.

# Cross Examined.

Q. Did the ravine at Sandusky, run parallel with the right face of the Fort?

A. From the right angle, it ran obliquely off to

Q. When you saw Lieutenant Bender in the advance, was he on the side of the ravine, nearer to the Fort?

A. No, on the other side.

Q. On which side of the ravine, did the troops advance?

A. On the side next to the garrison.

Q. When you saw Lieutenant Bender on the other side of the ravine, did you see any men with him?

A. No, the men were lying round to the right and left where I was, but I did not see him there.

Q. Where was the division of which he had the command on the advance?

A. They were broke going round.

Q. How far from the Fort, was Lieutenant Bender when you saw him on the other side of the ravine?

A. About forty or fifty paces

### interpolition of Examined by the Courted Transfeld)

- Q. How long after the troops broke was it, they received orders to cover themselves?
  - A. About five or ten minutes.
- Q. How far was it from the place where the troops broke, to the place you suppose Colonel Warburton covered himself?
- A. I suppose two or three hundred yards from the place where the troops broke, to the place where Colonel Warburton covered himself.
- Q. How far was it from the left angle of the Fort?
- A. About five hundred yards; I can scarcely judge.
- Q. Were you an officer of the 41st at the time of that action?
  - A. I, was not, I was Serjeant Major.
  - Q. Did you command a division?
  - A. I did not.

Corporal William Denis, of the 41st, discharged,

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SWORN.

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Q. How long have you been in the 41st, and how often in action?

A. Six years in the 41st, and three times in action.

Q. Were you'ld the action at River Raisin, on the 22d January, 1813, on the right or left, and in what division?

vision. it is at the right, in Captain, Tallon's di-

during the action?

A. Quite close to him, next man to him.

conduct during the action of the transfer of the state of

A. He behaved himself like a brave soldier, an efficer and a gentleman

Q. Did you hear and see him encourage his men?

A. Yes. The front of the A. Yes.

To Que How oftend is a friend of the more bill of .

A. At different times, four or five times during the action.

Q. What were the words he made use of ?

A. The Americans were going to the right, and Mr. Bender said, fire away 41st you will soon make them all prisoners.

and could be have done so without your knowledge?

A. He did not leave his division and could not have done so without my observing him.

Q. Did you hear him encourage the men to charge the enemy?

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A. Yes.

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action.

Q. Did you see Lieutenant Bender lead the men to the charge, and did you see him after wards?

A. I did see him lead them to the charge; I did not see him afterwards until I got to the left.

Q. Did not some of the men break, some time after the charge?

A. We were ordered to retreat.

Q. How long after was it, that you saw Lieutenant Bender on the left?

A. About one hour, or one hour and a half.

Q. Did you see him bring any ammunition to the left, and do you know if he brought any?

A. Yes I did, he was in front of it.

Q. Did you see him with a man of the name of Nettles?

A. Yes.

Q. Was there any horse and sled?

A. There was one. To tray grant or To . A.

Q. Did you at any time during the action, see Lieutenant Bender advance in front of the line?

A. No, he belonged to the division which was in the rear of me.

Q. Have you been in any action with Lieutenan: Bender, except that at River Raisin?

A. Yes, at the Miami Rapids.

Q. When was that action fought?

A. The 5th of May, 1813.

Q. Had you an opportunity of witnessing Lieutenant Bender's conduct?

A. I did not see him during the action.

### Examined by the Court.

PERSONAL PRO

- Q. Did you see a horse and sled in front of the ravine at the River Raisin, when the troops charged?
  - A. No, none at all.

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- Q. Did Lieutenant Bender's, or any other division, break before orders for retreat?
  - A. No, not as I saw.
- Q. You have stated that Lieutenant Bender's division was in the rear of you, how can you state that he did not leave his division?

A. Because when his division came up, he always came up with it.

### Andrew White, Colour Serjeant in the 41st,

#### SWORN.

Q. How long have you been in the service, how long a Serjeant, and how long a Colour Serjeant?

A. About seventeen years, almost six years a Sergeant, a Colour Serjeant almost two years.

Q. How often have you been in action?

A. Five times.

Q. Were you at the attack on Sandusky, in the right, or left wing, and in what subdivision?

A. I was in the right wing, and in the first subdivision of grenadiers.

Q. State to the Court the manner in which the right wing advanced to the attack, and what took place in passing to the right.

A. We formed in columns and subdivisions.—Colonel Warburton gave word—the right wing moved off to the right. The first division broke into the woods; the second division broke in like manner; the third subdivision broke, commanded by Mr. Bender, and fourth subdivision broke also: Some of the men left advancing and firing. I saw Mr. Bender several times, heard him call to his division and tell them to follow him towards the pickets; they did not mind him, what was left, advanced to the right angle of the garrison under Colonel Warburton.

Q. Did you see Captain Chambers and Colonel Warburton at the time the troops broke?

A. I saw Colonel Warburton nine or ten paces in front of me, and Captain Chambers about nine or ten paces to my right in the bush.

Q. What might be the distance from the place where the troops broke, to where Colonel Warburton was on the right?

A. About one hundred yards.

Q. To within what distance of the Fort did Colonel Warburton go?

A. About forty paces.

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Q. Did you arrive with Colonel Warburton on the right, or after him?

A. Within a minute or two, as soon as he did.

Q. Had you, or had you not, Colonel Warburton always in view, from the time the troops broke?

A. I had, he kept about six or seven paces before me.

Q. What took place immediately on your arrival on the right?

A. I fired the first shot, there were two men killed near where I was, and Colonel Warburton ordered every body to secure himself behind the bank as well he could.

Q. From the time the troops broke, until the time they secured themselves, did you see Captain Chambers with Colonel Warburton?

A. I saw him about three or four minutes after we had secured ourselves under the bank.

Q. Had Captain Chambers been with Colonel Warburton during that time, must you not have seen him?

A. I was in the rear of Colonel Warburton, I must have seen him.

Q. When Captain Chambers came up to Co-

lonel Warburton under the bank, what did he do?

A. He laid down also.

Q. What distance were you from Colonel Warburton when Captain Chambers came up?

A. Two or three paces.

Q. Did you see Ensign Proctor and Serjeant Stagnell there at the time, and how far were they from Colonel Warburton?

A. Ensign Proctor was at Colonel Warburton's feet, and Serjeant Stagnell two or three paces to Colonel Warburton's right.

Q. How far from Colonel Warburton did Captain Chambers lie down?

A. Within two or three paces of him.

Q. Did you see Lieutenant Bender any time after Captain Chambers came up, and where?

A. About nine minutes after Captain Chambers had come up, and more to the left.

Q. When Captain Chambers came up, did he come through the ravine, or above the bank?

A. Through the ravine. Man

Q. Did you when Captain Chambers came up, or any time after, hear him say any thing to Colonel Warburton about having found Lieutenant Bender under a log?

A, I did not; if he had, I think I must have heard him, as he was only two or three paces off.

Q. After Lieutenant Bender came up, did he

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have es off. id he and the other officers appear to act together in the usual manner?

A. Yes.

Q. How long did Lieutenant Bender remain under the bank?

A. About one half hour.

Q. What was the cause of his going away, and where did he go?

A. There was a discourse among the officers, that if the Americans sallied out, they would cut but a poor figure; upon which, Mr. Bender volunteered to go to the rear to collect men.

Q. When you saw Lieutenant Bender volunteer to go to the rear, did you hear Colonel Warburton make any, and what observation?

A. He said, if he were to go, he would be shot. Mr. Bender went double quick.

Q. Did you see Lieutenant Bender creep on his belly in going to the rear?

A. No. in I receive higher day our it !!

Q. How far did you see him go to the rear?

A. About one hundred yards.

Q. How long was he exposed to the fire of the enemy after he left Colonel Warburton?

A. About eight minutes.

Q. Did you see him fall?

A. He fell as soon as he had got about one hundred yards off, in a kind of marshy place.

Q. When Lieutenant Bender fell, was any, and what observations made by the officers under the bank?

A. They all said he was killed.

Q. Did Mr. Bender's hat fall off, and what happened after?

A. When he fell down his hat dropped off; he asked a man of the grenadiers to pick it up—the man said he would not, for he was afraid he should be shot.

Q. Were there any logs on the ground over which Lieutenant Bender passed in going to the rear?

A. I saw none.

Q. How long did Captain Chambers remain under the bank after his arrival?

A. Until eight or nine o'clock, at the retreat.

Q. How long did Ensign Proctor and Stagnell remain there after they had first arrived?

A. Till we retreated.

### Examined by the Court.

Did Lieutenant Bender return to the bank

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Serjeant Thomas White, 41st Regiment,

SWORN.

Q. Were you in the action at River Raisin, the 22d January, 1813, on the right or left ?

A. On the left. a feel out, this origer girl of of

Q. Did you see Lieutenant Bender after the action, and were you with him on any, and what duty?

A. Lieutenant Bender called on me to go and tell him the names of the men who were killed on the field.

Q. Did you go with him through the whole field, between the ravine and the enemy's position?

A. Yes.

Q. Did you see a horse and sled in front of the ravine?

A. There was a horse dead, tied to a barn near the picketing, but I saw no sled.

Q. Was it within the pickets, or on the outside, you saw the horse?

A. The outside.

Q. How far was it, and was it in the enemy's camp?

A: It was beyond the camp in which the enemy had been, before we attacked them.

Q. Was it before, or after the enemy had surrendered, that you went on the field?

A. It was after.

Q. Was the horse you mention, near a barn, if so, how far was it from the ravine?

A. It was near a barn, about one hundred and fifty yards from the ravine.

Q. When an order was given to retreat, did you go to the rayine with the rest of the troops?

A. Yes, and the American in the

Q. Did you take ground to the left with the Newfoundland or 41st ?

A. With the 41st. room sale in the

Q. Did you see Captain Mockler in the ravine?

A. Yes simusational drier arrange billedi.

Q. Did he go with you to the left?

A. He went before me.

Q. When you had taken ground to the left, did you see a horse and sled?

A. No. of st trail that I washed out to the

Q. Did you see Lieutenant Bender after he had arrived on the left, where some barns were?

A. No.

Q. If there had been a horse and sled in front of the ravine, when you crossed it, would you have seen it?

A. I think I should have seen it.

Q. Were you ever in action with Lieutenant Bender afterwards, what was his conduct?

A. I was with him at the Miami Rapids; he was at the taking of the first prisoners.

Q. Did you see a man of the name of Nettles, bring up ammunition, after you had gone to the left?

A. No, I did not see him at all.

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## Lieutenant Smith, 41st Regiment,

#### SWORN.

Q. Were you at the attack on Sandusky, on the 2d August, 1813?

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Q. Did you see Lieutenant Bender at any time after the attack, and when?

A. About ten or fifteen minutes after, when the men were under cover.

Q. Previous to seeing Lieutenant Bender, did you see Lieutenant M'Lean?

A. I was directed by General Proctor to go and tell Colonel Warburton, to bring off the troops if possible; on my return I met Lieutenant M'Lean, just as I got into the ravine, he called out to Lieutenant Bender. Mr. Bender made a signal with his hat, as much as to say, not to cross the ravine. Lieutenant M'Lean came to where Mr. Bender was, and I returned to the General.

Q. Do you, or do you not, recollect giving or-

ders to Mr. Bender, to go to where the General was?

A. I do not recollect.

Q. How long were you Adjutant to the 41st, and what was the conduct of Lieutenant Bender during that time?

A. About three years. With respect to his regimental duty, he performed it much to the satisfaction of his Commanding Officer.

Q. Do you know any thing of his conduct in ac-

A. I never saw him, but I heard him, on our advance to Buffalo, encouraging the Indians.

### General Proctor,

#### SWORN.

Q. Were you in the action at River Raisin, in January, 1813, and in what capacity?

A. I was as Colonel on the Staff, Commanding.

Q. Had you an opportunity of witnessing the conduct of Lieutenant Bender, during the action?

A. Lieutenant Bender commanded the second grand division on the right. The right being the principle point of attack, I of course was more there. I observed Lieutenant Bender doing his

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duty, and behaving as an officer ought to do in the face of the enemy.

Q. Did you observe him go in front, or in the rear of the line, upon any, and what occasion?

A. To the best of my recollection, I saw him step out a pace or two in front of the line to pick; up a musket, when the fire was most brisk.

Q. Did he leave his division during the action, and could he have done so without your observing it?

A. I do not know that he did leave his division, if he did, I think I must have observed it, I think I should have missed him if he had latterly; he was the only officer there, besides Mr. M'Lean

Q. Did you hear him encourage the men?

A. There was so much noise at the time, that: I cannot say. I remember his repeating the word "charge" once. The state of the continuous o

Q. At what period of the action was this?

A. It was shortly before our moving to the left, I suppose about a quarter of an hour.

Q. Did you go through the ravine with the troops, in taking ground to the left?

A. I did as far as the ravine led to the point where I wished to go.

Q. When you arrived at the barns, where the men took shelter on the left, did any remain in the ravine?

A. I belive not.

Q. While taking ground to the left before, or after, did you see a horse and sled in front of the ravine?

A. No, I think any horse there, must have been shot down, nor do I see what could have taken a horse and sled there.

Q. Had there been a horse and sled there, must you not have seen them?

A. Yes, I should, I think so.

Q. Have you a knowledge that any men came up from the rear, and that any ammunition was brought up to the position on the left?

A. I think I remember some men having come up from the rear, and I am certain that ammunition came up, from its having been emptied into a blanket. The men objected to it, as being American ammunition with buck shot in it.

Q. From what you saw of Lieutenant Bender's conduct, would you, or would you not, think him capable of misbehaving in action?

A. From what I saw of Mr. Bender's conduct in the fire, I should think it impossible, he would so far forget himself as to behave himself in a manner unbecoming an officer; the fire was of long continuance, and he appeared to be perfectly collected.

Q. Did you see Lieutenant Bender at any time, and when, during the attack on Sandusky?

A. Not during the attack. I am not perfectly

clear, but I think I saw him some time after the business had entirely failed, when I went to the rear of the right.

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Q. How long have you known Lieutenant Bender as an officer—how long has he been under your command, and what has always been his conduct?

A. I do not recollect how long Mr. Bender has been in the 41st—I had never occasion to find fault with Mr. Bender, but have had often occasion to commend his zeal and the desire he has shewn to do his duty. I was in command of the Regiment when he came to it.

Q. Did Captain Chambers, after the affair at Sandusky, make any, and what report to you respecting Lieutenant Bender?

A. He did, but from my personal knowledge of the character of the accuser and of the accused, I did not take that notice of it, that I should have done, had it come through another channel; I had my reasons for not attending to it.

Q. Was it reported to you after the action of 22d January, that Lieutenant Bender had misbehaved before the enemy?

A. It never was officially reported to me; there was a report of that kind—I directed Captain Tallon to call upon the accuser and tell him to come forward and prefer charges, but I never heard

from Captain Tallon on the subject.—Captain Tallon was in his quarters wounded at the same time. I at the same time observed that I had seen Lieutenant Bender do his duty, and that I would come forward and say so.

### Cross Examined.

Q. Was there not a sled with a field magazine left on the right when the troops moved to the left, and near to where a field piece had been at the commencement of the action?

A. I have already said that I saw none in front of the ravine.

Mr. President, and

Gentlemen of the Court Martial,

I have the satisfaction to find, that what I stated to you on my Defence, has been fully substantiated on evidence, so far at least, as the Court have thought it proper for me to proceed to proof in support of my assertions. I regret that I have been under the necessity of trespassing so long on your attention, but the nature of the proof to be produced and the anxiety natural to one in my sit-

ation, will, I flatter myself, operate as a sufficient

Before I proceed to offer any observations on the evidence now before you, I beg leave to be indulged with the remark, that that evidence deserves more or less weight, is entitled to more or less credit, from the character and motives of the witnesses on either side.—The witnesses on the part of the prosecution, can by no means be considered as impartial. I do not mean to include Captain Tallon, even it his evidence stood uncontradicted, it must hinge entirely on that of the first witness. It cannot, however, be considered to corroborate it, as it does not go to the same fact; on the contrary it places me with the wounded in the rear, at the same period that Captain Mockler said that he saw me in front of the ravine.- Captain Mockler and Captain Chambers, have no doubt an interest in my conviction.—The former feels it necessary for his character, to be consistent with himself, and to maintain now before the Court, in the shape of a charge, a report which originated with himself, in the manner he mentioned.—As for the latter, he is only a witness in name, he is in fact a prosecutor in disguise.-It must, I think, be apparent to the Court, that such is the case: had it not been considered irrelevant to the case, I could very easily have proved it.

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The witnesses whom I have called upon, can be liable to no objection. It is unnecessary to observe that the rank of some of them, is a pledge of their impartiality; of the others, one is a Serjeant in another Regiment, and two of them are discharged Soldiers, who are consequently beyond my controul; the remainder of them are Serjeants and Soldiers of the 41st Regiment, and there could certainly be nothing to induce them, to give evidence on my behalf.—I have no influence to exercise in their favour, they must have felt on the contrary, that, in appearing as witnesses for me, they exposed themselves to the enmity of Captain Chambers.—These observations will not be found groundless, when the nature of the evidence is taken into consideration.

With respect to the first charge, the sum and substance of Captain Mockler's testimony is, that when the troops had fallen back to the ravine, he saw me behind a horse and sled, such as he has described, at the distance of about thirty or forty yards in front of the ravine, and about seventy or eighty yards from the piqueting of the enemy.—That after having put a question to me about being wounded, he asked me if I had any ammunition, to which I answered in the negative; that he told me to go to my men; that I went accordingly, and that he saw no more of me until he saw

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me on the left, about half an hour afterwards.-Throughout the whole of his examination and cross-examination, he is positive in establishing two circumstances of much importance as to this charge; first, the place where the sled was, in front of the ravine, secondly, the time at which he says that he saw me there. The men, says he, had just retired before he saw me, meaning that they had retired to the ravine. Before they had retired, they had been immediately on my right, and had fallen back to the ravine. He adds, that the men were immediately ordered to go to the left along the ravine. Captain Mockler was not aware that orders had been given to retreat; he therefore went to the ravine for the purpose of collecting the men. and found some of them there. All these circumstances so well recollected, so minutely and so positively stated by Captain Mockler, form a necessary part of the fact attempted to be established against me, and rest altogether upon his evidence.

By the proof which I have adduced, I have not only shewn the impossibility of such a fact ever having existed under such circumstances, but I have accounted satisfactorily for my conduct from the commencement to the conclusion of the action, and I have done so, not by one witness, but by nine witnesses.

. I have shewn the impossibility of such a fact ev-

er having existed. First, by the testimony of Major General Proctor, by that of his Aid-de-Camp Mr. M'Lean, by that of Serjeant Dukes, by that of Corporal Dennis, who precisely at the time so particularly mentioned by Captain Mockler, when the men had retired to the ravine and were taking ground to the left, passed nearly over the same spot, who must all of them have seen a horse and sled had there been one, not only thirty or forty yards, but any where in front of the ravine, and vet they did not see it. Secondly, by the testimony of Serjeant Stagnell, one of the wounded, who remained on the field from some time before the retreat, to the very end of the action, who must have seen a horse and sled in the ravine, yet he did not see it. Thirdly, by the evidence of Lieutenant M'Lean who was with me in the ravine, from the very first moment of the retreat. who gave me orders to proceed to the rear, and this too, when the men were taking ground to the left, precisely at the time, when the fact sworn to by Captain Mockler, could alone have happened, and according to his statement, did happen. Thus must I have been at one and the same time, in the ravine and thirty or forty yards in front of it. And it cannot be here said that this is a mistake as to time, which may be immaterial; No, there is no calculation of time in Captain Mockler's testiÌu-

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mony, he states the occurrences of one fact, namely, the retreat to the ravine and the movement to the right, and mentions, that that fact had just then occurred, when he found me in the situation he has described. This impossibility becomes the more glaring, when it is considered that the whole distance from the position occupied on the right, to that subsequently occupied on the left, was no more, according to Mr. M'Lean's testimony, than four hundred or five hundred yards, a distance easily to be taken in, by the eye of any common observer, especially when the nature of the ground was that of an open plain, upon which, such an object as a horse and sled, must have appeared conspicuously to the view, and would have attracted the notice more as, according to the observation of Major General Proctor, it must have been matter of surprise, what could have brought it there: Not only there was no sled in front of the ravine, but it has been even impossible to discover in the rear, nay in the whole field, any other than that in charge of Nettles. But it becomes the less necessary for me to dwell longer upon this impossibility, as I very satisfactorily account for my conduct, by proving a fact directly to the contrary; this I do by the testimony of Lieutenant M'Lean, who was with me in the ravine, as I have already mentioned, from the very first moment of the retreat,

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who as Aid-de-Camp gave me orders to proceed to the rear for men and ammunition, and who saw me proceed to the rear in consequence of his orders.

I follow up the chain of evidence by shewing that men did come up from the rear. contended that there is not sufficient proof, that it was I, who sent them? But the opinion of Mr. M'Lean is in my fa There is also a strong presumption in my ........., because, as he observes, there was no other officer in the rear, besides me. Is it to be supposed that the men who had broken before the charge, and had gone, of their own accord to the rear, would of their own accord, have returned to that field which they had but just abandoned? But I have proof positive that I executed with diligence, and if I may be allowed to say, with zeal, the order with respect to the ammunition: That ammunition was brought up after the movement to the left, is certain from the evidence of Major General Proctor, Lieutenant M'Lean and Serjeant Thomas White; that it was brought up by me, should be strongly presumed in the absence of positive proof, because I received orders to that effect—because it was brought up after that order, and because it is not shewn, that a similar order was given to any other person. But that it was brought up by me, is equally certain from the

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evidence of John Nettles, from that of Serjeant Dukes, from that of Lieutenant M'Lean, and from that of Corporal Dennis ;- The time too at which it was brought up by me, may be clearly ascertained by Captain Mockler himself, who saw me on the left for the second time, he says, and it must have been at that time only, that he saw me distinctly; by Dukes who states about the same period; by Corporal Dennis who states having seen me somewhat later. Differences as to calculations of time, will of course always occur, between persons desirous of speaking the truth, but forming different opinions as to its duration, either from the different occupations in which they have been employed, or the different sensations, whether of pleasure or pain, which they may have experienced. If Nettles does not happen to agree with others as to time, no inference can therefore be drawn from that circumstance against his testimony; we find besides, that in many other respects, it is corroborated by that of other witnesses, by that of Dukes who saw me take down the fence. by that of Lieutenant M'Lean, and by that of Corporal Dennis; and even if it stood uncorroborated, what he says, carries with it intrinsic evidence of truth. Does it appear from him that I had a disposition to shelter myself? No, quite the reverse;—though exposed to the fire of the ene-

my when taking down the fence and going to the left, I went in front of the sled; had I ever been disposed to shelter myself, I then perhaps might have done so with impunity. To expose myself to danger was not then necessary, either to encourage the men or for the attainment of any object, yet I did not even then do so, I used every diligence. Nettles says, that I appeared to be in search of him, when I first met him, and even if I did not ask him about the ammunition, must I not have taken it for granted, that he had ammunition as well as Noonan, who in going to the rear says, he saw me with a sled of ammunition. I have therefore proved in the most conclusive manner, to this Court, that from the moment of my departure for the rear, after Mr. M'Lean's orders, until the moment of my arrival on the left, I could not have been in front of the ravine;—that so far from being there, I was then in the discharge of my duty in the rear, a duty which exposed me to the very heavy fire from the enemy, while the whole of the troops were secure behind the barns on the left.

With respect to the whole of my conduct during the action before the retreat to the ravine, I have only to refer generally, to the testimony of the Major General and his Aid-de-Camp, and to that of all the other witnesses, who have been

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heard as to this charge. I must, however, state the fact of my never having left my division during the action. My covering Serjeant states, it positively to be the case, and who must have perceived it sooner, had I done so he He adds, that we moved up three or four times by grand divisions, and this serves immediately to explain what was observed by Corporal Dennis, the left hand man of the right division, that whenever my division came up, I always came up with it. But laying aside for a moment, the strong testimony that I have adduced, as to my conduct in the rear, after leaving the ravine, can it be made reconcilable with reason, that being in the ravine and having a better opportunity than Captain Mockler, of knowing from the Aid-de-Camp, that the object of the movement, was to take shelter behind those very barns, I should have been so devoid of common sense as to go thirty or forty paces in the front, in search of a horse and sled, if any thing could have brought it there, and this too in the face of day and in the presence of those, who he himself acknowledges, were yet passing the ravine, who must inevitably have seen me; but of whom not one is produced to corroborate his testimony.—Supposing a total absence of proof on my part, from the period of the retreat, would my conduct during the action on the right, go for nothing; would it make

no impression whatsoever in favour of my innocence? If a man's character, when once put to the test, on a trying occasion, did not shield him from an attack upon some unguarded moment of his life, for which he could not rigourously account before a Court of Justice, no one could ever consider himself safe, without a witness at his side. Can it for a moment be imagined, that at a time when all danger had nearly ceased, I would expose a character, which, but an instant before, had been seasoned by a probation of nearly three hours in action, during which so many casualties had occurred? But, fortunately for me, I stand upon a different footing; fortunately for me, during the whole of the action, there is not a single chasm to be found in my conduct, not a single moment that is not accounted for. I am supported against the first charge, by positive and circumstantial evidence, which has completely disproved the crime whereof I have been accused: nor am I less fortunate with respect to the attack on Sandusky.

I have been placed by Captain Mockler in a situation where any one must have seen me, if I had ever been there; but Captain Chambers takes care to place me in a situation where no one can see me, no one can hear me, but himself—two hundred yards, not directly to the rear, but inclining to the rear, to the left. Did he observe any other officers nno-

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under cover of the ravine and the log? No! Were there any men near me, when he saw me behind the log? No! neither officer, nor man was near me; the scene was therefore very adroitly chosen—the manager of the plot, displayed a great deal of ingenuity in the selection—he was determined that I should act the part of misbehaving in the presence of the enemy, not in the presence of the enemy of country, but in the presence of my own enemy; therefore it was, that I must misbehave before him. in a place where no person must see me but he himself, a place which had also the advantage of being completely out of the range of fire, and still, however, a log must be introduced for the purposes of safety, and of ridicule. Before I happened to be transported to this secluded spot, by the spell of Captain Chamber's enchantment, it was a piece of good fortune that I should have been seen by some one it was fortunate for me, that when the troops broke, I did not escape the notice of Ensign Proctor, of my covering Serjeant, or Colour Serjeant White and of Serjeant Stagnell; that was no time for misbehaviour or concealment. there, at a moment when the fire of the enemy was overpowering, when the men had broken and were abandoning the attack, before they came up to it, I did every thing in my power to rally them and lead them on to the Fort. Where was Cap-

tain Chambers then? If his zeal had been such as he has endeavoured to shew, it would no doubt have been better employed in preventing the men from dispersing, than in volunteering to collect them, after they had dispersed, as he states; but the fact is, that Captain Chambers hardly knew they had dispersed at all; he was, he says, at a proper place, at the head of the wing as Acting Deputy Quarter Master General, yet, when asked if the second subdivision scattered into the bush. he does not know. My efforts not proving to be as successful as I wished, I was at least determined to go on myself. I did go on. I outran my covering Serjeant. I would have reached the right angle with Colonel Warburton, had I not been delayed by my efforts to encourage the men. I followed not far from the first subdivision, composed of the grenadiers, with which Colonel Warburton was. I was then about twenty paces in front of Serjeant Dukes, towards the Fort. I cannot state the distance correctly. Colonel Warburton was not more than twelve or fifteen paces to my right. I heard the word pass from Colonel Warburton for every man to secure himself, and I secured myself under the bank as the others did. This is no doubt the log of Captain Chambers, with the assistance of about one hundred and fifty, or one hundred and sixty yards, to make up the two hundred. Serjeant

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Dukes states, that when he had secured himself. he still saw me on the bank. This place afforded certainly as much shelter as any other part of the ray ... Where then was the necessity of going two numbered yards in the rear? But Captain Chambers says at one time, that the ravine afforded shelter, at another time, that it did not; his answers are very evasive as to this part of the subject; he felt that his story must hang together; he swears that there were two men killed lying down; one of my witnesses awears that they were killed standing up. It is at, or near this place, no dou't, that I was seen by Lieutenant Fitzgerald. may be a little variance as to a few paces here and there, but it is impossible to expect under such circumstances, when the mind is otherwise occupied, that any person could take an exact admeasurement of distance. Where was Captain Chambers at the time? If we are to take his word for it, he was with Colonel Warburton, on his first arrival at the right. Colour Serjeant White and Serjeant Stagnell swear positively, that he was not. Serjeant White must have seen him, had he been with Colonel Warburton, for Serjeant White followed up close to Colonel Warburton, he always had him in view since the troops broke, and must have seen Captain Chambers, had the latter come up with Colonel Warburton to the right

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angle of the Fort, and he did not see him. Serjeant Stagnell who was within a yard or two of Colonel Warburton, must have seen him also, and did not see him; their testimony is corroborated by Ensign Proctor, who fixes the moment when Captain Chambers did first arrive. But Captain Chambers has himself furnished us with evidence, that he could not have come up so soon as Colonel Warburton, "he was disabled in both legs," and certainly those legs which to his great regret, could not perform a certain operation, mentioned by him on his examination, were still less capable of bringing him up with speed, to the right.

When was it then, that Captain Chambers did come up? He came up for the first time, say the three witnesses, a few minutes after Colonel Warburton was under the bank. I arrived some short time, almost immediately, after Captain Chambers. Colonel Warburton was then under the bank, and we were situated relatively to him, as follows: Ensign Proctor lay close at his feet, Serjeants Andrew White and Stagnell were one or two yards from Colonel Warburton, and Captain Chambers was within two or three feet of him, and I was within about the same distance of Captain Chambers. Here it is, that contradictions begin to thicken upon Captain Chambers; he swears that having waited some time with Colonel Warburton in

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the ravine, expecting the men to come up, he proposed to Colonel Warburton, to go back to look for them. One of my witnesses swears, that he must have heard Captain Chambers, if he had made such a proposal, but that he never did hear him say any such thing.

Captain Chambers swears that he did go to the rear. It appears from the testimony of the other witnesses, that he did not go to the rear, while I was with Colone. Warburton, from the first moment they saw him arrive. Captain Chambers has sworn, that when he came with me to Colonel Warburton, he reported me to Colonel Warburton, that he had found me hidden behind a log, and that he told him so in his usual tone of voice. The three witnesses swear that they must have heard him, if he had made such a report, and that he did not say any such thing, neither at the time he came up, nor at the time I came up, nor at any other time. I had not been near half an hour under the bank, as I have already had the honour of stating, when having heard Colonel Warburton observe, that if a sortie were to be made by the enemy, we should be in a bad situation, as we were without men. I offered my services to go and collect them in the rear. Colonel Warburton observed, that there was some danger of being shot.—I went notwithstanding.—The witnesses heard this. Captain Chambers was within hearing, as well as the others; he has sworn that he knew nothing about my volunteering.

Whenever the enemy perceived an object above the bank, they never failed to fire at it. The moment I became visible to them, they opened a heavy fire upon me : This Captain Chambers could not deny without contradicting what he had before saw,-he was anxious, however, to destroy any effect it might produce on the mind of the Court: Yes, says Captain Chambers, he was exposed, but took great care to shelter himself, by leaping from log to log and creeping on his belly. Two witnesses have sworn they saw no logs in the place where I passed, and that they did not see me creep on my belly. It will not escape the attention of the Court, that it was over the same ground, which I took in leaving the bank, that Captain Chambers passed in retreating, together with the others who were there; and that, although it was night at the time of their departure, it was found necessary to wait until the moon had obscured itself behind a cloud, in order that darkness might save them from such a fire, as that to which I had been exposed in broad day light.

Well indeed does it become Captain Chambers to make use of such expressions; he who would not stir from behind that very bank, when called

upon by me, on the part of General Prooter: We even find him lowering his laud tone of voice, to a soft whisper, least he should be even everheard by the enemy. What inconsistency does he not ashibit upon this occasion? According to his own account of himself, upon his first arrival on the right angle of the Fort, he volunteered his services to go and collect the men in the rear.—Returned from his expedition to the rear, in which he has made me so conspicuous, he remains under the bank, and while there, receives through me, regeives through Mr. M'Lean, an order to bring the men to the General. But his ardour has disappeared, he is no longer the same man, doing violence to his disabled legs he will not stir; he had just seen what had happened to me his answer was that General Proctor might come and bring away the men himself—that it was impossible to bring them through the ravine. possible? Because he found himself secure under the bank, a place which he would not leave, even to obey the orders of his Commanding Officer.

Such a tissue of contradiction, never, I believe, came under the eye of a Court of Justice; contradictions so glaring, as at once to dispose of the second charge. If in every essential circumstance which Captain Chambers has stated, he has been directly and positively contradicted by the testi-

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mony of three witnesses, it is impossible, according to every principle of evidence, that he can be entitled to the least credit as to any other part of his testimony. My conduct at the time the troops broke, my speedy arrival at the place where Colonel Warburton was, my conduct in going to the rear, to collect the men, would be alone sufficient to disprove this charge. No one will now be surprised to find, that with such an unjust and ill founded accusation, hanging over me, ever since May, 1814, I should have made such efforts to obtain a trial, and that Captain Chambers should have made such efforts to resist it. I cannot refrain from again expressing my gratitude to His Excellency Sir Gordon Drummond, for having afforded me an opportunity of establishing my innocence; that innocence I now place under your protection. water to be were to be mouth as

No. 381.

HORSE-GUARDS,

November 27, 1815.

AT a General Court Martial, held at Quebec on the 17th of July, 1815, and continued by adjournments to the 1st of August following, Lieutenant Benoit Bender, of the 41st Regiment, was arraigned upon the undermentioned Charges-Viz:

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18t. "For misbehaving before the Enemy in Ac"tion, on or about the 22d January, 1813, at or near
"the River Raisin, in the Michigan Territory, in
"the United States of America, by concealing himself,
"while the Detachment of His Majesty's Troops,
"with which he was serving, was engaged with the
"Enemy."

2d. "For misbehaving before the Enemy in Ac"tion, on or about the 2d August, 1813, at or near
"Fore Sandusky, in the United States of America,
"by concealing himself in the Rear, while the De"tachment of His Majesty's Troops, with which he
"was serving, had advanced, and was engaged with
"the Enemy."

Upon which charges the Court came to the following decision:

"The Court having duly weighed and considered the Evidence adduced in support of the Prosecution, as well as what the Prisoner has alleged in his defence, is of opinion, that the Prisoner, Lieutenant Benoit Bender, of the 41st Regiment of Foot, is Not Guilty of either of the Charges preferred against him, and the Court doth therefore honourably acquit him of the same."

The Prince Regent has been pleased, in the name and on the behalf of His Majesty to approve

and confirm the Finding and Sentence of the Court, and the Commander in Chief directs, that the foregoing charges preferred against Lieutenant Bender, together with the Finding and Sentence of the Court shall be entered in the General Order Book, and read at the Head of every Regiment in His Majesty's Service.

By Command of His Royal Highness,

The Commander in Chief,

HARRY CALVERT,

Adjutant General.

THE END.

J. LAME, PRINTER.

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